S. HRG. 98-961

THE FEDERAL NEUTRALITY ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON SEPARATION OF POWERS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 1405

A BILL TO ASSURE THE FIRST AMENDMENT RIGHTS OF ALL CITIZENS AND TO PROVIDE CRIMINAL PENALTIES FOR VIOLATIONS THEREOF

APRIL 25 AND MAY 23, 1984

Serial No. J-98-115

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THE FEDERAL NEUTRALITY ACT

WEDNESDAY, APRIL 25, 1984

U.S. Senate,
Subcommittee on Separation of Powers,
Committee on the Judiciary,
Washington, DC.

The subcommittee met at 10:38 a.m., in room SD-562, Dirksen Senate Office Building, Hon. Jeremiah Denton (member of the subcommittee) presiding.

Staff present: Richard D. Holcomb, general counsel, and Frances R. Wermuth, chief clerk, Subcommittee on Security and Terrorism, also Steven R. Valentine, chief counsel and staff director, and Scott L. Wilkinson, Jr., chief clerk, Subcommittee on Separation of Powers.

OPENING STATEMENT OF SENATOR JEREMIAH DENTON

Senator Denton. Good morning. This hearing will come to order.

Senator East has asked me to chair the hearing this morning and I shall honor that request. We are privileged to have with us the Honorable Larry Craig, Republican Congressman from Idaho.

I will, of course, ask him to testify first in order for him to meet the demands of his schedule.

The subcommittee is meeting today to receive testimony on S. 1405, the Federal Neutrality Act. Our witnesses include the Congressman who introduced H.R. 4828, the companion bill to S. 1405; Mr. Richard B. Dingman, president of the Fairness Committee; and David H. Remes, of the Washington, DC, law firm of Covington and Burling, who will testify on behalf of the American Civil Liberties Union. Before calling on our first witness, I would like to summarize the overall policy issue under consideration today.

During this century, it has been the policy of our country that there should be limitations on the political influence of Federal employees on other citizens and on the electoral process. In 1919, a provision in the Federal Criminal Code (18 U.S.C. 1913) imposed criminal penalties on Federal employees who engage in lobbying. In 1940, President Franklin Roosevelt successfully obtained congressional passage of legislation that, in addition to modifying the existing prohibitions against political activities by Federal Government employees, also extended the provisions of the Hatch Act to officers and employees of State and local agencies "whose principal employment is in connection with any activity which is financed in whole or in part by loans or grants by the United States * * *." In other words, it was the policy of our Government to avoid private political advocacy by Government employees.

Despite the established policy that the employees and resources of the Government should not be used to promote private political viewpoints, there has been an increasing realization that the policy is, in fact, violated with alarming frequency. The principal vehicle by which Government funds find their way into the political process is via "recipient organizations," entities that receive Government moneys or in-kind contributions through contracts, grants or other means. Government funds are awarded to recipient organizations for implementation of specific programs authorized by Congress. It appears, however, that many of the recipient organizations acquire Government funds but divert a significant portion of them away from their intended purpose and to political advocacy.

For example, Prof. Marshall J. Breger in his lecture entitled "Halting Taxpayer Subsidy of Partisan Advocacy," gives the following examples: Community Services Administration, CSA, grantees have prepared sample letters for constituents to oppose the administration's budget proposals, have urged readers of a grantee magazine to write their Congressmen to oppose curtailment of the food stamp program, and have circulated memos urging Congressmen to support continuation of the Health Planning Program. Over $42,000 of Family Planning Grant money under title X of the Public Service Act has been used to pay dues to organizations that lobby on a regular basis.

The Organization of Chinese American Women, using funds provided under the Women's Educational Equity Act, brought at least 20 chapter representatives to Washington for a national conference whose printed schedule included "how-to" lectures on political action and planned visits to Capitol Hill for meetings with legislators. Los Angeles CETA workers circulated political petitions for candidates and walked precincts on behalf of President Carter, all on Government paid time. The list of Government subsidies for partisan advocacy goes on and on.

I believe that the use of Government funds for political advocacy is improper for a number of reasons. First, Government subsidy of partisan advocacy raises a first amendment problem. Why should taxpayers underwrite lobbying for ideological causes or values of which they disapprove? Or as Thomas Jefferson observed, "To compel a man to furnish funds for the propagation of ideas he disbelieves and abhors is sinful and tyrannical."

Second, the use of Federal money to promote private political points of view impairs the free functioning of the electoral process. Allowing private persons to use Government money to disseminate propaganda in support of a particular cause or a particular candidate gives the appearance of an official imprimatur for particular ideological viewpoints, opening the floodgates to Government manipulation of public opinion.

Third, the practice is the "spoils system" carried to an extreme. That is, Government bureaucrats provide funds to their friends who manage recipient organizations in exchange for political support and with the explicit or implicit understanding that, if their roles are later reversed, the largesse will continue.

Finally, when tax-exempt organizations use Government funds for private political advocacy, they are in fact "double dipping."

That is, they are receiving a double tax paid benefit that assists them in promoting their private political viewpoints.

To correct the situation, I have introduced S. 1405, the Federal Neutrality Act. The bill is not aimed at particular parties, groups, or points of view. It would apply equally to all organizations that enjoy tax exempt status under section 501(c) of the Internal Revenue Code, that is such organizations that receive Federal funds and that voluntarily choose to engage in lobbying activities. The bill would not advance or control any political opinion or belief, nor would it interfere with any political opinion or belief, nor would it interfere with or influence the ability of any citizen to vote as he pleases. In short, it would not act to stifle or restrict political advocacy, but would prevent the appearance or fact of Government subsidization of political ideologies.

I believe that the "Federal Neutrality" approach is the best way to eliminate taxpayer financing of private political advocacy.

[A copy of S. 1405 follows:]

98TH CONGRESS
1ST SESSION

S. 1405

To assure the first amendment rights of all citizens and to provide criminal penalties for violations thereof.

IN THE SENATE OF THE UNITED STATES

JUNE 6, 1983

Mr. DENTON introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To assure the first amendment rights of all citizens and to provide criminal penalties for violations thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Neutrality Act of 1983".

DECLARATION OF PURPOSE

SEC. 2. The Congress finds that—

(1) Government funds are being used to finance and otherwise to subsidize private political advocacy;

(2) the expenditure of Government funds for private political advocacy exceeds the jurisdiction of the

Federal Government by not providing for the general welfare of the United States;

(3) the expenditure of Government funds for private political advocacy exceeds the jurisdiction of the Federal Government by preferring those political and ideological views, and the organized expression of such views, of the recipients of Government funds over the views of others who do not receive Government funds;

(4) the expenditure of Government funds in furtherance of such private political advocacy exceeds the jurisdiction of the Federal Government by abridging the freedom of speech and freedom of the press that are exclusive rights of the people;

(5) the expenditure of Government funds for privage political advocacy exceeds the jurisdiction of the Federal Government by abridging the exclusive right of the people to petition the Government for redress of grievances;

(6) the expenditure of Government funds for private political advocacy by groups having tax-exempt status is, in effect, a double public benefit for the advocacy of these groups;

(7) the expenditure of Government funds for private political advocacy is often beyond or contrary to

the intent of Congress when it appropriates funds for specific programs; and

(8) the unauthorized use of Government funds for private political advocacy threatens the very fabric of the political process.

PROHIBITIONS

SEC. 3. (a)(1) No Government funds may be disbursed to any recipient organization which engages in political advocacy or which is an affiliate of any organization which engages in political advocacy;

(2) No Government funds received from the United States or from one of its instrumentalities or agents, may be used for political advocacy;

(3) Any recipient organization which uses Government funds to engage in political advocacy must reimburse the Federal Treasury the total amount of Government funds received for any program(s), grant(s), contracts or other source of Government funds from which the funds used for political advocacy were obtained.

DEFINITIONS

(b) For the purposes of this Act—

(1) "recipient organization" as used herein includes any entity or person employed by such entity which receives Government funds and is exempt from

taxation pursuant to section 501(c) of the Internal Revenue Code;

(2) "Government funds" as used herein includes all money and/or in-kind support, direct or indirect, provided to a recipient organization whether by grant, loan contract, cooperative agreement, or any other similar means, funded by or from the Treasury of the United States;

(3) "political advocacy" as used herein includes—

(A) attempting to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through contributions, endorsements, publicity, or similar activity;

(B) establishing, administering, contributing to, or paying the expenses of a political action committee, either directly or indirectly;

(C) attempting to affect the opinions of the general public, or any segment thereof, with respect to governmental decisions;

(D) attempting to influence governmental decisions through communication with any member or employee of a legislative body, or with any Government official or employee who may participate in the decisionmaking process;

(E) participating in or contributing to the expenses of judicial or administrative litigation other than litigation in which the organization is a party, with standing to sue, to intervene as a party, or to defend on its own behalf;

(F) dues paying or contributing money, services, or any other thing of value, to an organization that engages in political advocacy;

(G) conducting or supporting training programs which encourage or provide guidance with respect to political advocacy, boycotts, picketing, strikes, or demonstrations;

(H) networking or the organization of, or assistance in, the organization of any organization, association, coalition, alliance, federation, confederation, or similar entity, a purpose of which will be to engage in political advocacy;

(I) publication of any analysis, study, research, memorandum, or statement of policy which is prepared or published with the intent or design of having an influence upon the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, or any Government decisions;

(J) presenting of any program, addressed to the public, any portion of which is intended, calculated, or designed to influence any governmental decisions; or

(K) the conduct of any of the above-enumerated actions constituting political advocacy by or through one or more affiliates;

(4) "political advocacy" as used herein does not include—

(A) providing technical advice or assistance to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision;

(B) appearances before, or communication to, any legislative body with respect to a possible decision of such body which would affect the existence of the organization, its powers and duties, tax-exempt status, or the deduction of contributions to the organization;

(C) communications between the organization and its bona fide members with respect to pending or proposed legislation which would affect the existence of the organization, its powers and duties, tax-exempt status, or the tax deduction of contributions to the organization;

(D) participating in litigation on behalf of individuals, if the recipient organization has received a Federal, State, or local grant, contract, or other agreement for the express purpose of doing so;

(E) applying for or making a bid in connection with a grant, contract, unsolicited proposal, or other agreement, or providing information in connection with such application at the request of the Government agency awarding the grant, contract, or other agreement;

(F) participating in a particular activity which is specifically directed and/or sanctioned by an Act of Congress, and where the activity is a purpose of the recipient organization's grant or contract; or

(G) participating in a particular activity which constitutes only collective bargaining as to wages, hours, benefits, or working conditions by an organized labor or trade union, as defined in section 152(5), of title 29, United States Code, on behalf of employees of any Federal, State, or local government which the labor or trade union represents;

(5) "networking" includes activities intended to aggregate resources and further organizational cooperation in the context of political advocacy;

(6) "publication" means the preparation, production, and distribution of writings, films, radio, television, and telephone communications, books, pamphlets, journals, newsletters, newspapers, articles, public appearances, press interviews, and other communications related to political advocacy;

(7) "dues paying" includes direct and indirect cash and in-kind support or endorsement tendered to organizations or individuals. No recipient of Federal dollars may launder funds or contribute them to any organization or individual which could not certify as to its own lack of political advocacy and promise to refrain from engaging in advocacy. Recipients of Federal funds from any intermediary are subject to all provisions of the Act;

(8) "litigation" includes all actions at law or equity before any Federal, State, or local court or administrative tribunal, and further includes class-action suits or amicus curiae briefs;

(9) "affiliate" includes another organization or group of organizations where—

(A) the governing instrument of either organization requires it to be bound by the decisions of the other organization on matters of political advocacy; or

(B) the governing board of either organization includes persons who—

(i) are specifically designated representatives of the other organization or are members of the governing board, officers or paid executive staff members of such other organization, and

(ii) by aggregating their votes, have sufficient voting power to cause or prevent action on matters of political advocacy by either organization;

An organization may qualify as an affiliate whether or not it is exempt from taxation pursuant to section 501(c) of the Internal Revenue Code, so long as conditions enumerated in subparts (A) or (B), above, are present; and

(10) "Government decisions" as used herein include—

(A) the introduction, passage, amendment, defeat, signing, or veto of legislation, appropriations, resolutions, legislative confirmation of ap-

pointees, or constitutional amendments at the Federal, State, or local level;

(B) any rulemakings, guidelines, policy statements, or other administrative decisions of general applicability and future effect;

(C) any licensing, grant, ratemaking, formal or informal adjudication, other than actions or decisions related to the administration of the recipient organization's specific grant, contract, or agreement involved; or

(D) the decisionmaking process of any Federal, State, or local court.

SUNSHINE

SEC. 4. Within one hundred and eighty days of the effective date of this Act, all departments, agencies, and instrumentalities of the United States disbursing Government funds to recipient organizations shall adopt regulations which require the recipient organizations to which they disburse Government funds to disclose to the disburser of the funds on an annual basis during receipt or use of Federal funds—

(1) the articles of incorporation and bylaws of the recipient organization;

(2) a list of all other government agencies (whether Federal, State, or local) from which the recipient or-

ganization is currently receiving funds, a description of the funding level, and the purpose of the funding;

(3) a list of all other government agencies (whether Federal, State, or local) before which the organization currently has applications for funding pending, including a statement of the amount of funds requested and the purpose of the funding;

(4) a list of the names and addresses together with the résumés of the board of directors and operating officers of the recipient organization;

(5) a list of the names, addresses, and types of business conducted by any other organizations or entities upon whose board of directors any of the directors or operating officers of the recipient organization also serve;

(6) a copy of all publications, newsletters, periodicals, pamphlets, journals, or members' reports issued by the recipient organization during the preceding twelve-month period;

(7) a list of the names and addresses of any registered lobbyists employed by the recipient organization or by an affiliate or who are retained by or on behalf of any person or organization to represent the recipient organization with regard to any governmental decisions; and

(8) any other information which the disbursing agency determines to be relevant toward effectuation of the purposes of this Act.

AUDITS

SEC. 5. (1) All departments, agencies, and instrumentalities of the United States shall assume the annual performance of an audit of any recipient organizations to which they have disbursed funds in order to assure compliance with this Act.

(2) Recipient organizations shall make available to authorized Government officials all books, records, and other documents necessary to determine compliance with this Act. Refusal by a recipient organization to make said books, records, or other documents available shall result in cessation of further Government funds to that recipient organization.

ENFORCEMENT

SEC. 6. (1) Certification, under penalty of perjury, by recipient organizations, with respect to noninvolvement in political advocacy, and disclosure, under penalty of perjury, by recipient organizations, are required prior to receipt, renewal, or extension of any contract, grant, or loan, or any other provision of Government funds. Any intentional misrepresentation with respect to the certification or disclosure requirements shall constitute a felony, punishable by a fine up to $10,000 per offense, and/or a prison term not to exceed two years per offense.

(2) All Government officials, or their agents responsible for disbursing Government funds by grant, contract, loan, cooperative agreement, or any similar means, shall establish, prior to their consideration of any prospective recipient organization for funding, that the prospective recipient organization does not presently, and will not in the future, engage in political advocacy. Any agency or instrumentality responsible for the disbursement of Government funds shall—

(A) require that every recipient organization certify, under penalty of perjury, to such agency or instrumentality, at the time of its application for Government funds, that such recipient organization is not engaged in political advocacy and will not engage in political advocacy;

(B) require that every recipient organization disclose, under penalty of perjury, to such agency or instrumentality, at the time of its application for Government funds and annually thereafter, the information required by section 4 of this Act;

(C) require that every renewal or extension of Government funds to any recipient organization contain certifications and disclosures set forth in subsections (A) and (B) of this section;

(D) require that the officers, agents, and employees of such agency or instrumentality establish procedures necessary to guarantee that no recipient organization is engaged in or will engage in political advocacy; and

(E) require that every recipient individual certify, under penalty of perjury, to such agency or instrumentality that such person has not been previously disbarred from the receipt of Federal funds under the provisions of this Act.

(3)(A) Whoever, being an officer or employee of the United States, or of any agency or other instrumentality thereof, or an officer or employee of any corporation chartered by the United States, or of any recipient organization who is found after trial in the appropriate United States district court to have intentionally violated any provision of this Act, shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

(B) Whoever, being an officer or employee of the United States, any agency or other instrumentality thereof, or an officer or employee of any corporation chartered by the United States, or of any recipient organization who negligently violates any provision of this Act shall, upon such a finding after trial in the appropriate United States district court, be subject to discharge and forfeiture of office or such other penalty as the court shall prescribe.

(C) The United States or any private citizen thereof shall have a civil cause of action against any person or recipient organization for violations of any provision of this Act. A private citizen may only commence an action in the event there is not already an action pending by the United States, against a person or recipient organization for alleged violations of any provision of this Act, on the date the private citizen files his action. Any such action shall be filed in an appropriate United States District Court. A prevailing plaintiff shall be entitled to recover—

(a) the amount of Government funds expended for political advocacy, but in no event less than $10,000;

(b) in the case of a judgment entered on behalf of the United States or any instrumentality thereof, three times the amount of Government funds expended for political advocacy;

(c) such equitable relief as the court shall deem appropriate;

(d) an order disbarring any recipient organization found in violation of this Act from receiving any Government funds;

(e) reasonable attorney's fees and costs of investigation and litigation actually incurred; and

(f) punitive damages.

(4) Prosecution for violation of this Act will extend to all employees of the Federal Government, federally chartered corporations, as well as officers and employees of recipient organizations.

(5) Any violation of this statute shall be the basis for total disbarment of Federal benefits from any source or agreement whatsoever.

RIGHT TO APPEAL, ALTER, OR AMEND

SEC. 7. The right to repeal, alter, or amend this Act at any time is expressly reserved.

EFFECTIVE DATE

SEC. 8. This Act shall take efffect on the date signed by the President of the United States.

SEVERABILITY

SEC. 9. If any provision of this Act, or the application thereof to any person, organization, or circumstance, is held invalid, the provision to other persons, organizations, or circumstances shall not be affected thereby.

[Subsequent to the hearing, Senator Denton submitted the following material:]

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

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JOEL S. LISKER, CHIEF COUNSEL AND STAFF DIRECTOR

29 August 1984

Honorable John P. East
Chairman
Subcommittee on Separation of Powers
163 Dirksen Senate Office Building
Washington, D.C. 20510

Dear John:

After reviewing the two days of testimony on S. 1405, the Federal Neutrality Act, I have determined that there is a need to make some changes to the bill as presently drafted. Therefore, I plan to offer the attached amendment in the form of a substitute when the bill is marked-up by the Subcommittee.

For your information and convenience, I have also enclosed a summary of the amendments as well as a copy of the bill as presently drafted which indicate where the changes are being made. I would ask that these documents together with a copy of this letter be added as an appendix to the hearing record.

I thank you in advance for your assistance in this matter.

Sincerely,

Jerry

Jeremiah Denton
United States Senator

JD:hj

029820.254 S.L.C.

AMENDMENT NO. ___ Calendar No. ___

Purpose: To make certain technical and stylistic changes.

IN THE SENATE OF THE UNITED STATES--98th Cong., 2d Sess.

S. 1405

To assure the first amendment rights of all citizens and to provide criminal penalties for violations thereof.

Referred to the Committee on ______________________________and ordered to be printed

Ordered to lie on the table and to be printed

Amendment In the Nature of a Substitute intended to be proposed by Mr. Denton

Viz:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the '' Neutrality in Federal Expenditures Act of 1984".

DECLARATION OF PURPOSE

Sec. 2. The Congress finds that--

(1) Government funds are being used to finance and otherwise to subsidize private political advocacy;

(2) the expenditure of Government funds for private political advocacy exceeds the jurisdiction of the Federal Government by not providing for the general welfare of the United States;

(3) the expenditure of Government funds for private political advocacy exceeds the jurisdiction of the Federal Government by preferring those political and ideological views, and the organized expression of such views, of the recipients of Government funds over the views of others who do not receive Government funds;

(4) the expenditure of Government funds in furtherance of such private political advocacy exceeds the jurisdiction of the Federal Government by abridging the freedom of speech and freedom of the press that are exclusive rights of the people;

(5) the expenditure of Government funds for private

political advocacy exceeds the jurisdiction of the Federal Government by abridging the exclusive right of the people to petition the Government for redress of grievances;

(6) the expenditure of Government funds for private political advocacy by groups having tax-exempt status is, in effect, a double public benefit for the advocacy of these groups;

(7) the expenditure of Government funds for private political advocacy is often beyond or contrary to the intent of Congress when it appropriates funds for specific programs; and

(8) the unauthorized use of Government funds for private political advocacy threatens the very fabric of the political process.

DEFINITIONS

Sec. 3. For the purposes of this Act, the term--

(1) ''recipient organization'' includes any entity which receives Government funds and is exempt from taxation pursuant to section 501 (c) (3) of the Internal Revenue Code of 1954;

(2) ''Government funds'' includes all money or in-kind support, direct or indirect, provided to a recipient organization whether by grant, loan contract, cooperative agreement, or any other similar means, funded by or from the Treasury of the United States;

(3) ''political advocacy'' includes--

(A) attempting to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through contributions, endorsements, publicity, or similar activity;

(B) establishing, administering, contributing to, or paying the expenses of a political action committee, either directly or indirectly;

(C) attempting to affect the opinions of the general public, or any segment thereof, with respect to governmental decisions;

(D) attempting to influence governmental decisions through communication with any member or employee of a legislative body, or with any Government official or employee who may participate in the decisionmaking process;

(E) participating in or contributing to the expenses of judicial or administrative litigation other than litigation in which the organization is a party, with standing to sue, to intervene as a party, or to defend on its own behalf;

(F) paying dues or contributing money, services, or any other thing of value, to an organization that engages in political advocacy;

(G) conducting or supporting training programs which encourage or provide guidance with respect to political advocacy, boycotts, picketing, strikes, or demonstrations;

(H) networking or the organization of, or assistance in, the organization of any organization, association, coalition, alliance, federation, confederation, or similar entity, a purpose of which will be to engage in political advocacy;

(I) publication of any analysis, study, research, memorandum, or statement of policy which is prepared or published with the intent or design of having an influence upon the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, or any Government decisions;

(J) presenting of any program, addressed to the public, any portion of which is intended, calculated, or designed to influence any governmental decisions; or

(K) the conduct of any of the above-enumerated actions constituting political advocacy by or through one or more affiliates;

(4) ''political advocacy'' does not include--

(A) providing technical advice or assistance to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision;

(B) appearances before, or communication to, any legislative body with respect to a possible decision of such body which would affect the existence of the organization, its powers and duties, tax-exempt status, or the deduction of contributions to the organization;

(C) communications between the organization and its bona fide members with respect to pending or proposed legislation which would affect the existence of the organization, its powers and duties, tax-exempt status, or the tax deduction of contributions to the organization;

(D) participating in litigation on behalf of individuals, if the recipient organization has received a Federal, State, or local grant, contract, or other agreement for the express purpose of doing so;

(E) applying for or making a bid in connection with a grant, contract, unsolicited proposal, or other agreement, or providing information in connection with such application at the request of the Government agency awarding the grant, contract, or other agreement;

(F) participating in a particular activity which is specifically directed or sanctioned by law, and where the activity is a purpose of the recipient organization's grant or contract;

(G) participating in a particular activity which constitutes only collective bargaining as to wages, hours, benefits, or working conditions by an organized labor or trade union, as defined in section 2 (5) of the National Labor Relations Act (29 U.S.C. 152 (5)) on behalf of employees of any Federal, State, or local government which the labor or trade union represents; or

(H) making available to any person or to the public the results of nonpartisan analysis, study, or research which is not prepared or made available with the intent or design of influencing the outcome of any Federal, State, or local election, referendum, or similar procedure, and which does not expressly advocate any action by the general public or any segment thereof, to promote a change in any Federal, State, or local legislation or governmental policy;

(5) ''networking'' includes activities intended to aggregate resources and further organizational cooperation in the context of political advocacy;

(6) ''publication'' means the preparation, production, and distribution of writings, films, radio, television, and telephone communications, books, pamphlets, journals, newsletters, newspapers, articles, public appearances, press interviews, and other communications related to political advocacy;

(7) ''dues paying'' includes direct and indirect cash and in-kind support or endorsement tendered to organizations or individuals;

(8) ''litigation'' includes all actions at law or equity before any Federal, State, or local court or

administrative tribunal, and further includes class-action suits or amicus curiae briefs;

(9) ''affiliate'' means an organization which is associated with another organization in such a manner that--

(A) the governing instrument of either organization requires it to be bound by the decisions of the other organization on matters of political advocacy; or

(B) the governing board of either organization includes persons who--

(i) are specifically designated representatives of the other organization or are members of the governing board, officers or paid executive staff members of such other organization, and

(ii) by aggregating their votes, have sufficient voting power to cause or prevent action on matters of political advocacy by either organization,

and includes any organization exempt from taxation pursuant to section 501 (c) (3) of the Internal Revenue Code of 1954; and

(10) ''Government decisions'' includes--

(A) the introduction, passage, amendment, defeat, signing, or veto of legislation, appropriations, resolutions, legislative confirmation of appointees, or constitutional amendments at the Federal, State, or local level;

(B) any rulemakings, guidelines, policy statements, or other administrative decisions of general applicability and future effect;

(C) any licensing, grant, ratemaking, formal or informal adjudication, other than actions or decisions related to the administration of the recipient organization's specific grant, contract, or agreement involved; or

(D) the decisionmaking process of any Federal, State, or local court.

PROHIBITIONS

Sec. 4. (a) No Government funds may be disbursed to any recipient organization which engages in political advocacy or which is an affiliate of any organization which engages in political advocacy.

(b) No Government funds received from the United States or from one of its instrumentalities or agents, may be used for political advocacy.

(c) Any recipient organization which uses Government funds to engage in political advocacy must reimburse the Treasury the total amount of Government funds received for any program, grant, contracts or other source of Government funds from which the funds used for political advocacy were obtained.

(d) No recipient of Federal dollars may launder funds or contribute them to any organization or individual which does not certify as to its own lack of political advocacy and promise to refrain from engaging in advocacy. Recipients of Federal funds from any intermediary are subject to all provisions of this Act.

SUNSHINE

Sec. 5. Within one hundred and eighty days after the date of enactment of this Act, all departments, agencies, and instrumentalities of the United States disbursing Government funds to recipient organizations shall adopt regulations which require the recipient organizations to which they disburse Government funds to disclose and make available on the business premises for public inspection upon receipt or use of Federal funds--

(1) the articles of incorporation and bylaws of the recipient organization;

(2) a list of all other government agencies (whether Federal, State, or local) from which the recipient organization is currently receiving funds, a description of the funding level, and the purpose of the funding;

(3) a list of all other government agencies (whether Federal, State, or local) before which the organization currently has applications for funding pending, including a statement of the amount of funds requested and the purpose of the funding;

(4) a list of the names and addresses together with the resumes of the board of directors and operating officers of the recipient organization;

(5) a list of the names, addresses, and types of business conducted by any other organizations or entities upon whose board of directors any of the directors or operating officers of the recipient organization also serve;

(6) a list of the names and addresses of any registered lobbyists employed by the recipient organization or by an affiliate or who are retained by or on behalf of any person or organization to represent the recipient organization with regard to any governmental decisions;

(7) a copy of all publications, newsletters, periodicals, pamphlets, journals, or members' reports issued by the recipient organization; and

(8) any other information which the disbursing agency determines to be relevant to achieve the purposes of this Act.

AUDITS

Sec. 6. (a) All departments, agencies, and instrumentalities of the United States shall assure the annual performance of an audit of any recipient organizations to which they have disbursed funds in order to assure compliance with this Act.

(b) Recipient organizations shall make available to authorized Government officials all books, records, and other documents necessary to determine compliance with this Act. Refusal by a recipient organization to make such books, records, or other documents available shall result in cessation of further Government funds to that recipient organization.

ENFORCEMENT

Sec. 7. (a) Certification, under penalty of perjury, by recipient organizations, with respect to noninvolvement in political advocacy, and disclosure, under penalty of perjury, by recipient organizations, shall be required prior to receipt, renewal, or extension of any contract, grant, or loan, or any other provision of Government funds. Any intentional misrepresentation with respect to the certification or disclosure requirements shall be punishable for a a term of imprisonment not more than two years or by a fine not more than $10,000, or both.

(b) All Government officials, or their agents responsible for disbursing Government funds by grant, contract, loan, cooperative agreement, or any similar means, shall establish, prior to their consideration of any prospective recipient organization for funding, that the prospective recipient organization does not presently, and will not in the future, engage in political advocacy. Any agency or instrumentality responsible for the disbursement of Government funds shall--

(1) require that every recipient organization certify, under penalty of perjury, to such agency or instrumentality, at the time of its application for Government funds, that such recipient organization is not engaged in political advocacy and will not engage in

political advocacy;

(2) require that every recipient organization disclose, under penalty of perjury, to such agency or instrumentality, at the time of its application for Government funds and annually thereafter, the information required by this section;

(3) require that every renewal or extension of Government funds to any recipient organization contain certifications and disclosures set forth in clauses (1) and (2);

(4) require that the officers, agents, and employees of such agency or instrumentality establish procedures necessary to guarantee that no recipient organization or its agents are engaged in or will engage in political advocacy; and

(5) require that every recipient individual or organization certify, under penalty of perjury, to such agency or instrumentality that such individual or organization has not been previously disbarred from the receipt of Federal funds under the provisions of this Act.

(c) (1) Whoever, being an officer or employee of the United States, or of any agency or other instrumentality thereof, or an officer or employee of any corporation chartered by the United States, or of any recipient organization who intentionally violates any provision of this Act, shall be imprisoned for not more than two years or fined not more than $10,000, or both.

(2) Whoever, being an officer or employee of the United States, any agency or other instrumentality thereof, or an officer or employee of any corporation chartered by the United States shall be subject to discharge and forfeiture of office.

(d) The United States or any private citizen thereof shall have a civil cause of action against any person or recipient organization for violations of any provision of this Act. A private citizen may only commence an action in the event there is not already an action pending by the United States, against a person or recipient organization for alleged violations of any provision of this Act, on the date the private citizen files his action. Any such action shall be filed in an appropriate United States District Court. A prevailing plaintiff shall be entitled to recover--

(1) the amount of Government funds expended for political advocacy, but in no event less than $10,000 for deposit in the Treasury;

(2) in the case of a judgment entered on behalf of the United States or any instrumentality thereof, three times the amount of Government funds expended for political advocacy;

(3) such equitable relief as the court shall deem appropriate;

(4) an order disbarring any recipient organization found in violation of this Act from receiving any Government funds;

(5) reasonable attorney's fees and costs of investigation and litigation actually incurred; and

(6) punitive damages.

(e) Prosecution for violation of this Act will extend to all employees of the Federal Government, federally chartered corporations, as well as officers and employees of recipient organizations.

(f) Any violation of this Act shall be the basis for total disbarment of Federal benefits from any source or agreement.

SUMMARY OF SUBSTITUTE AMENDMENT TO S. 1405 TO BE OFFERED BY SENATOR JEREMIAH DENTON

Page 1, line 3 - The title of the bill is being changed to more accurately reflect the purpose of the bill. This is the title used by Congressman Craig in the companion House bill.

Page 3, lines 7, 11, 14, 16, 17, 21, and 22 - style and technical changes.

Page 3, between lines 19 and 20 - the new subsection (d) is relocated from the definitional section (page 8, lines 12-18) as it is more appropriate to list it under the prohibitions section.

Page 3, line 23 - a substantive change which narrows the definiton of "recipient organization' by excluding actions of employees.

Page 4, lines 1, 2, 3, 4 and 9 - style and technical changes.

Page 5, line 6 - style change.

Page 6, line 6 - style change.

Page 7, lines 13, 14, 16, 21 and 24 - style and technical changes.

Page 7, after line 24 - a substantive change which adds an additional exception to the definition of "political advocacy".

Page 8, lines 12-18 - language moved to the prohibition section (page 3, between lines 19 and 20).

Page 8, lines 23 and 24 - stlye changes.

Page 9, lines 16, 17, 18, 19, 20, 21, and 22 - style and technical changes.

Page 10, lines 14 and 15 - style changes.

Page 10, lines 19 and 20 - a substantive change which will decrease the burden on the recipient organization by requiring that it only make available for public inspection certain documents instead of requiring that copies of the documents be forwarded to the disburser of the Federal funds.

Page 11, lines 9, 16, 18, 19, 20 and 25 - style changes.

Page 12, lines 2, 5, 10, 13, 17, 20 and 24 - style changes.

Page 12, line 6 - correction of typographical error in original bill.

Page 13, lines 1, 2, 3, 11, 17, 21, 22, 24 and 25 - style changes.

Page 14, lines 1, 4, 6, 8, 11, 15, 16, 17, 18, 19, 22, 23, 24 - style and technical changes.

PAGE 15, LINES 1, 2, 3, 13, 15, 19, 21, AND 24 - STYLE CHANGES.

PAGE 15, LINE 14 - A SUBSTANTIVE CHANGE WHICH WOULD REQURE THAT THE FIRST $10,000 RECOVERED VIA BY A PRIVATE ACTION BE DEPOSITED IN THE TREASURY. THE BALANCE OF THE RECOVERY WOULD GO TO THE PREVAILING PLAINTIFF. THE ACT ALSO OFFERS THE PRIVATE PLAINTIFF AN INCENTIVE BY ALLOWING FOR RECOVERY OF REASONABLE ATTORNEY'S FEES AND COSTS INCURRED SHOULD HE PREVAIL.

PAGE 16, LINES 2 AND 6 - STYLE CHANGES.

PAGE 16, LINES 9-19 - ELIMINATED AS BEING SUPERFLUOUS.

98TH CONGRESS
1ST SESSION

S. 1405

To assure the first amendment rights of all citizens and to provide criminal penalties for violations thereof.

IN THE SENATE OF THE UNITED STATES

JUNE 6, 1983

Mr. DENTON introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To assure the first amendment rights of all citizens and to provide criminal penalties for violations thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the ~~"Federal Neutrality~~ "Neutrality in Federal Expenditures Act of 198~~3~~4".

DECLARATION OF PURPOSE

SEC. 2. The Congress finds that—

(1) Government funds are being used to finance and otherwise to subsidize private political advocacy;

(2) the expenditure of Government funds for private political advocacy exceeds the jurisdiction of the

Federal Government by not providing for the general welfare of the United States;

(3) the expenditure of Government funds for private political advocacy exceeds the jurisdiction of the Federal Government by preferring those political and ideological views, and the organized expression of such views, of the recipients of Government funds over the views of others who do not receive Government funds;

(4) the expenditure of Government funds in furtherance of such private political advocacy exceeds the jurisdiction of the Federal Government by abridging the freedom of speech and freedom of the press that are exclusive rights of the people;

(5) the expenditure of Government funds for privage political advocacy exceeds the jurisdiction of the Federal Government by abridging the exclusive right of the people to petition the Government for redress of grievances;

(6) the expenditure of Government funds for private political advocacy by groups having tax-exempt status is, in effect, a double public benefit for the advocacy of these groups;

(7) the expenditure of Government funds for private political advocacy is often beyond or contrary to

the intent of Congress when it appropriates funds for specific programs; and

(8) the unauthorized use of Government funds for private political advocacy threatens the very fabric of the political process.

PROHIBITIONS

SEC. ~~3~~ 4. (a)~~(1)~~ No Government funds may be disbursed to any recipient organization which engages in political advocacy or which is an affiliate of any organization which engages in political advocacy~~;~~ .

(b) ~~(2)~~ No Government funds received from the United States or from one of its instrumentalities or agents, may be used for political advocacy~~;~~ .

(c) ~~(3)~~ Any recipient organization which uses Government funds to engage in political advocacy must reimburse the ~~Federal~~ Treasury the total amount of Government funds received for any program~~(s)~~, grant~~(s)~~, contracts or other source of Government funds from which the funds used for political advocacy were obtained.

(d) No recipient of Federal dollars may launder funds or contribute them to any organization or individual which does not certify as to its own lack of political advocacy and promise to refrain from engaging in advocacy. Recipients of Federal funds from any intermediary are subject to all provisions of this Act.

DEFINITIONS

Sec. 3. ~~(b)~~ For the purposes of this Act~~:~~ , the term --

(1) "recipient organization" ~~as used herein~~ includes any entity ~~or person employed by such entity~~ which receives Government funds and is exempt from

taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1954;

(2) "Government funds" ~~as used herein~~ includes all money ~~and~~/or in-kind support, direct or indirect, provided to a recipient organization whether by grant, loan contract, cooperative agreement, or any other similar means, funded by or from the Treasury of the United States;

(3) "political advocacy" ~~as used herein~~ includes—

(A) attempting to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through contributions, endorsements, publicity, or similar activity;

(B) establishing, administering, contributing to, or paying the expenses of a political action committee, either directly or indirectly;

(C) attempting to affect the opinions of the general public, or any segment thereof, with respect to governmental decisions;

(D) attempting to influence governmental decisions through communication with any member or employee of a legislative body, or with any Government official or employee who may participate in the decisionmaking process;

(E) participating in or contributing to the expenses of judicial or administrative litigation other than litigation in which the organization is a party, with standing to sue, to intervene as a party, or to defend on its own behalf;

(F) ~~dues~~ paying dues or contributing money, services, or any other thing of value, to an organization that engages in political advocacy;

(G) conducting or supporting training programs which encourage or provide guidance with respect to political advocacy, boycotts, picketing, strikes, or demonstrations;

(H) networking or the organization of, or assistance in, the organization of any organization, association, coalition, alliance, federation, confederation, or similar entity, a purpose of which will be to engage in political advocacy;

(I) publication of any analysis, study, research, memorandum, or statement of policy which is prepared or published with the intent or design of having an influence upon the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, or any Government decisions;

(J) presenting of any program, addressed to the public, any portion of which is intended, calculated, or designed to influence any governmental decisions; or

(K) the conduct of any of the above-enumerated actions constituting political advocacy by or through one or more affiliates;

(4) "political advocacy" ~~as used herein~~ does not include—

(A) providing technical advice or assistance to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision;

(B) appearances before, or communication to, any legislative body with respect to a possible decision of such body which would affect the existence of the organization, its powers and duties, tax-exempt status, or the deduction of contributions to the organization;

(C) communications between the organization and its bona fide members with respect to pending or proposed legislation which would affect the existence of the organization, its powers and duties, tax-exempt status, or the tax deduction of contributions to the organization;

(D) participating in litigation on behalf of individuals, if the recipient organization has received a Federal, State, or local grant, contract, or other agreement for the express purpose of doing so;

(E) applying for or making a bid in connection with a grant, contract, unsolicited proposal, or other agreement, or providing information in connection with such application at the request of the Government agency awarding the grant, contract, or other agreement;

(F) participating in a particular activity which is specifically directed ~~and/~~or sanctioned by law, ~~an Act of Congress,~~ and where the activity is a purpose of the recipient organization's grant or contract; ~~or~~

(G) participating in a particular activity which constitutes only collective bargaining as to wages, hours, benefits, or working conditions by an organized labor or trade union, as defined in section ~~152(5) of title 29, United States Code,~~ 2(5) of the National Labor Relations Act (29 U.S.C. 152(5)) on behalf of employees of any Federal, State, or local government which the labor or trade union represents; or

(H) Making available to any person or to the public the results of nonpartison analysis, study, or research which is not prepared or made available with the intent or design of influencing the outcome of any Federal, State, or local election, referendum, or similar procedure, and which does not expressly advocate any action by the general public or any segment thereof, to promote a change in any Federal, State, or local legislation or government policy;

(5) "networking" includes activities intended to aggregate resources and further organizational cooperation in the context of political advocacy;

(6) "publication" means the preparation, production, and distribution of writings, films, radio, television, and telephone communications, books, pamphlets, journals, newsletters, newspapers, articles, public appearances, press interviews, and other communications related to political advocacy;

(7) "dues paying" includes direct and indirect cash and in-kind support or endorsement tendered to organizations or individuals. ~~No recipient of Federal dollars may launder funds or contribute them to any organization or individual which could not certify as to its own lack of political advocacy and promise to refrain from engaging in advocacy. Recipients of Federal funds from any intermediary are subject to all provisions of the Act;~~

(8) "litigation" includes all actions at law or equity before any Federal, State, or local court or administrative tribunal, and further includes class-action suits or amicus curiae briefs;

(9) "affiliate" ~~includes another~~ means an organization ~~or group of organizations where--~~ which is associated with organization in such a manner that--

(A) the governing instrument of either organization requires it to be bound by the decisions of the other organization on matters of political advocacy; or

(B) the governing board of either organization includes persons who--

(i) are specifically designated representatives of the other organization or are members of the governing board, officers or paid executive staff members of such other organization, and

(ii) by aggregating their votes, have sufficient voting power to cause or prevent action on matters of political advocacy by either organization;

and includes any organization ~~An organization may qualify as an affiliate whether or not it is~~ exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1954; ~~, so long as conditions enumerated in subparts (A) or (B) above, are present;~~ and

(10) "Government decisions" ~~as used herein~~ include~~—~~s--

(A) the introduction, passage, amendment, defeat, signing, or veto of legislation, appropriations, resolutions, legislative confirmation of ap-

pointees, or constitutional amendments at the Federal, State, or local level;

(B) any rulemakings, guidelines, policy statements, or other administrative decisions of general applicability and future effect;

(C) any licensing, grant, ratemaking, formal or informal adjudication, other than actions or decisions related to the administration of the recipient organization's specific grant, contract, or agreement involved; or

(D) the decisionmaking process of any Federal, State, or local court.

SUNSHINE

SEC. ~~4~~ 5. Within one hundred and eighty days ~~of the effective~~ after the enactment of date of this Act, all departments, agencies, and instrumentalities of the United States disbursing Government funds to recipient organizations shall adopt regulations which require the recipient organizations to which they disburse Government funds to disclose ~~to the disburser of the funds on an annual basis during receipt or use of Federal funds—~~ and make available on the business premises for public inspection upon receipt or use of Federal funds--

(1) the articles of incorporation and bylaws of the recipient organization;

(2) a list of all other government agencies (whether Federal, State, or local) from which the recipient or-

ganization is currently receiving funds, a description of the funding level, and the purpose of the funding;

(3) a list of all other government agencies (whether Federal, State, or local) before which the organization currently has applications for funding pending, including a statement of the amount of funds requested and the purpose of the funding;

(4) a list of the names and addresses together with the résumés of the board of directors and operating officers of the recipient organization;

(5) a list of the names, addresses, and types of business conducted by any other organizations or entities upon whose board of directors any of the directors or operating officers of the recipient organization also serve;

(~~6~~ 7) a copy of all publications, newsletters, periodicals, pamphlets, journals, or members' reports issued by the recipient organization ~~during the preceding twelve-month period~~ ; and

(~~7~~ 6) a list of the names and addresses of any registered lobbyists employed by the recipient organization or by an affiliate or who are retained by or on behalf of any person or organization to represent the recipient organization with regard to any governmental decisions; ~~and~~

(8) any other information which the disbursing agency determines to be relevant ~~toward effectuation of~~ to achieve the purposes of this Act.

AUDITS

SEC. ~~5. (1)~~ 6 a All departments, agencies, and instrumentalities of the United States shall assu~~m~~re the annual performance of an audit of any recipient organizations to which they have disbursed funds in order to assure compliance with this Act.

(~~2~~ b) Recipient organizations shall make available to authorized Government officials all books, records, and other documents necessary to determine compliance with this Act. Refusal by a recipient organization to make ~~said~~ such books, records, or other documents available shall result in cessation of further Government funds to that recipient organization.

ENFORCEMENT

SEC. ~~6~~ 7. (~~1~~ a) Certification, under penalty of perjury, by recipient organizations, with respect to noninvolvement in political advocacy, and disclosure, under penalty of perjury, by recipient organizations, ~~are~~ shall be required prior to receipt, renewal, or extension of any contract, grant, or loan, or any other provision of Government funds. Any intentional misrepresentation with respect to the certification or disclosure requirements shall ~~constitute a felony,~~ be punishable for a term of imprisonment not more than two years or by a fine ~~up~~

not more than ~~to~~ $10,000 ~~per offense, and/or a prison term not to exceed two years per offense.~~ or both.

b (2) All Government officials, or their agents responsible for disbursing Government funds by grant, contract, loan, cooperative agreement, or any similar means, shall establish, prior to their consideration of any prospective recipient organization for funding, that the prospective recipient organization does not presently, and will not in the future, engage in political advocacy. Any agency or instrumentality responsible for the disbursement of Government funds shall --

1 (A) require that every recipient organization certify, under penalty of perjury, to such agency or instrumentality, at the time of its application for Government funds, that such recipient organization is not engaged in political advocacy and will not engage in political advocacy;

2 (B) require that every recipient organization disclose, under penalty of perjury, to such agency or instrumentality, at the time of its application for Government funds and annually thereafter, the information required by this section ~~4 of this Act~~;

3 (C) require that every renewal or extension of Government funds to any recipient organization contain certifications and disclosures set forth in clauses ~~subsections~~ 1 (A) and 2 (B) ~~of this section~~.

(~~D~~4) require that the officers, agents, and employees of such agency or instrumentality establish procedures necessary to guarantee that no recipient organization ~~is~~ or its agents are engaged in or will engage in political advocacy; and

(~~E~~5) require that every recipient individual or organization certify, under penalty of perjury, to such agency or instrumentality that such ~~person~~ individual or organization has not been previously disbarred from the receipt of Federal funds under the provisions of this Act.

(~~3~~C)(~~A~~1) Whoever, being an officer or employee of the United States, or of any agency or other instrumentality thereof, or an officer or employee of any corporation chartered by the United States, or of any recipient organization who ~~is found after trial in the appropriate United States district court to have~~ intentionally violate~~d~~s any provision of this Act, shall be ~~fined not more than $10,000 or imprisoned for not more than two years, or both.~~ imprisoned for not more than two years or fined not more than $10,000 or both.

(~~B~~2) Whoever, being an officer or employee of the United States, any agency or other instrumentality thereof, or an officer or employee of any corporation chartered by the United States, ~~or of any recipient organization who negligently violates any provision of this Act shall, upon such a finding after trial in the appropriate United States district~~

~~court~~, be subject to discharge and forfeiture of office. ~~or such other penalty as the court shall prescribe.~~

(~~c~~d) The United States or any private citizen thereof shall have a civil cause of action against any person or recipient organization for violations of any provision of this Act. A private citizen may only commence an action in the event there is not already an action pending by the United States, against a person or recipient organization for alleged violations of any provision of this Act, on the date the private citizen files his action. Any such action shall be filed in an appropriate United States District Court. A prevailing plaintiff shall be entitled to recover— --

(~~a~~1) the amount of Government funds expended for political advocacy, but in no event less than $10,000~~;~~ for deposit in the treasury;

(~~b~~2) in the case of a judgment entered on behalf of the United States or any instrumentality thereof, three times the amount of Government funds expended for political advocacy;

(~~c~~3) such equitable relief as the court shall deem appropriate;

(~~d~~4) an order disbarring any recipient organization found in violation of this Act from receiving any Government funds;

(~~e~~5) reasonable attorney's fees and costs of investigation and litigation actually incurred; and

(f) punitive damages.

(~~4~~e) Prosecution for violation of this Act will extend to all employees of the Federal Government, federally chartered corporations, as well as officers and employees of recipient organizations.

(~~5~~f) Any violation of this ~~statute~~ Act shall be the basis for total disbarment of Federal benefits from any source or agreement whatsoever.

~~RIGHT TO APPEAL, ALTER, OR AMEND~~

~~SEC. 7. The right to repeal, alter, or amend this Act at any time is expressly reserved.~~

~~EFFECTIVE DATE~~

~~SEC. 8. This Act shall take effect on the date signed by the President of the United States.~~

~~SEVERABILITY~~

~~SEC. 9. If any provision of this Act, or the application thereof to any person, organization, or circumstance, is held invalid, the provision to other persons, organizations, or circumstances shall not be affected thereby.~~

Senator DENTON. Senator East, as I said, was unable to be here today but has asked that his prepared statement be placed in the record and it shall be, without objection, and also without objection, Senator East has asked to be listed as a cosponsor of S. 1405. And I welcome his support.

[The following was submitted for the record:]

PREPARED STATEMENT OF SENATOR JOHN P. EAST

I regret that a scheduling conflict prevents me from opening the hearings of the Subcommittee on Separation of Powers on S. 1405, the Federal Neutrality Act. I am grateful that my distinguished colleague on the Subcommittee, Senator Denton, has consented to serve as the Acting Chairman of the Subcommittee for the purpose of conducting these hearings.

In anticipation of the Subcommittee's hearings on S. 1405, on April 5, 1984, I requested a report on the legislation from the General Accounting Office, the Office of Management and Budget, and the Department of Justice. I have asked each of these agencies to respond to this request by May 31, 1984. It is my hope that one or more of the agency reports will be received by the Subcommittee prior to May 23, 1984, which is the second and final day of hearings on the bill.

I have little doubt that a quotation from Thomas Jefferson, which expresses a principle that is at the heart of the concept behind S. 1405, will be heard often in the course of these hearings. "To compel a man to furnish funds for the propagation of ideas he disbelieves and abhors," declared our third President, "is sinful and tyrannical."

President Jefferson's principle animates a general national policy that employees and resources of the Federal government must not be used to promote private political points of view. This policy is evinced in Federal law. The so-called Hatch Act strictly limits the political activities of Federal employees. And a Federal criminal statute, codified at 18 U.S.C. § 1913, prohibits Federal employees from using government funds to lobby the Congress.

The Supreme Court of the United States has recognized Jefferson's principle as well. In 1977, for instance, the Court held in *Abood* v. *Detroit Board of Education* that it is unconstitutional to require teachers to contribute dues to a labor union that uses those proceeds to promote a political cause to which the teacher is opposed. And as the Court noted several years ago in *First National Bank of Boston* v. *Bellotti*, where governmental action "suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people, the First Amendment is plainly offended."

Stated simply, S. 1405 would implement the principle stated so forcefully by President Jefferson by ensuring that Federal taxpayer funds are not used, either directly or indirectly, by tax-exempt organizations for the purpose of political advocacy. It would accomplish this purpose by defining political advocacy, allowing for thorough public scrutiny of the records of these organizations to ascertain their compliance with the law, and establishing stringent penalties for violations.

S. 1405 is designed to protect the First Amendment rights of the taxpayer. The freedom of speech that the Amendment guarantees is at the core of our political freedom as a people. But the right to speak necessarily includes the right not to speak. A citizen has a right to speak, or not to speak, in support of political causes or ideas as he or she sees fit. Thus, when taxpayer dollars are used to support or subsidize political points of view with which the taxpayer does not agree, his right to free speech is violated.

In fairness, however, I must acknowledge that the constitutional issues implicit in the consideration of S. 1405 are not beyond dispute. That is why these hearings will include testimony by several distinguished lawyers who specialize in the field of constitutional law.

The impetus behind S. 1405 is the widespread belief that large amounts of Federal money are being provided to non-profit, tax-exempt organizations that then use these revenues to advance their private political viewpoints. Thus, beyond the exploration of the constitutional implications of this legislation, a central purpose of these hearings is to examine specific examples of these abuses in order to demonstrate the need for this legislation.

Once again, I thank Senator Denton for agreeding to chair these hearings in my absence. I look forward to studying the testimony that will be heard during these proceedings.

Senator DENTON. At this point, I would like to place in the record, without objection, a constitutional analysis of the proposal to deny government funding to tax-exempt organizations engaging in political advocacy, prepared by Lawrence J. Straw, Jr., and Mark B. Gilmartin of the Washington, DC, law firm of Smaltz & Neelley.

I also place in the record a series of questions and answers concerning S. 1405 as prepared by Mr. Straw.

[The following was submitted for the record:]

THE CONSTITUTIONALITY OF THE PROPOSAL TO DENY GOVERNMENT FUNDING TO TAX EXEMPT ORGANIZATIONS ENGAGING IN POLITICAL ADVOCACY

Lawrence J. Straw, Jr.,
Mark B. Gilmartin

I

INTRODUCTION

Over the last century, it has been the judgment of this country that the political influence of federal employees on others and on the electoral process should be limited. United States Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548, 557 (1973) (upholding the constitutionality of the Hatch Act). Indeed, President Franklin Roosevelt successfully solicited Congressional passage of legislation in 1940 which, in addition to modifying then existent prohibitions against federal government employees' political activities, also extended the Hatch Act to officers and employees of state and local agencies "'whose principal employment is in connection with any activity which is financed in whole or in part by loans or grants made by the United States. . . .'" Id. at 561. The imprimatur of the federal government upon private political advocacy was to be avoided. See also Oklahoma v. United States Civil Service Commission, 330 U.S. 127, 143 (1947).

Despite this conventional wisdom that the employees and resources of the government should not be used to promote private political viewpoints, there has been an increasing realization that this is, in fact, occurring. The principal method by which government funds find their way into the political process is via "recipient organizations" (entities which receive government monies or in-kind contributions by contract, grant or other means). Government funds are awarded to recipient organizations, for them to implement specific programs authorized by Congress to be accomplished by private entities. What has happened, however, is that once many of these recipient organizations acquire government funds, they divert all or a portion of the funds away from their intended purpose and to political advocacy.

The nature of the abuse was pointed out by The Wall Street

Journal in a recent editorial which also declared that "no political opinion has a moral right to representation at taxpayer expense":

> The problem of shady dealing by government contractors is as old as the republic. . . . A new version of the swindle takes place in fields like health and human services. Organizations get a government contract and use it to run that Xerox machine, man that phone bank, get out the troops for that political rally. These new entrepreneurs are usually persons of the left, who often share an ideology with the government bureaucrats who are doling out the cash. [The Wall Street Journal, Jan. 26, 1983]

The use of government funds for political advocacy by recipient organizations is improper for several reasons. *First*, the expenditure of government funds to promote private political views is outside of the intent of Congress when particular programs are authorized. *Second*, the use of federal money for political advocacy creates the impression of government support for particular political points of view. *Third*, it is the "spoils system" carried to an extreme. That is, government bureaucrats often provide funds to their cronies, who manage recipient organizations, in exchange for past or future political support and with the explicit or implicit understanding that if their roles are later reversed, the largesse will continue. *Finally*, where tax-exempt organizations are using government funds for their private political advocacy, they are "double dipping," that is, they are receiving a double tax-paid benefit which assists them to espouse their private political viewpoint.

In *The Federalist Papers*, James Madison wrote of the dangers to the republic arising from faction. Madison opined that factions introduced instability, injustice and confusion into the public councils leading to the demise of popular government. He felt that the United States could control this danger because of the free competition for public support of differing viewpoints. *See The Federalist Papers*, Nos. 10 and 51. When the substantial resources or authority of the government are placed at the disposal of a particular faction, the free competition visualized by our forefathers is skewed. In order to prevent such an imbalance of political debate, legislation such as the Hatch Act, 5 U.S.C. § 7321, *et seq.*, and the Federal Election Campaign Act, 2 U.S.C. § 431, *et seq.*, were enacted. An underlying goal of this type of legislation is the maintenance of a sense of balance, impartiality and fairness in the free competition for public support.

This philosophy of impartiality provides the underpinnings for the proposal to deny government funds to tax exempt organizations which engage in political advocacy. The proposal is not aimed at particular parties, groups, or points of view, but applies equally to all organizations which enjoy tax exempt status under Section 501(c) of the Internal Revenue Code and voluntarily choose to engage in lobbying activities.

The constitutionality of the proposal in its proffered form has been determined by the United States Supreme Court in decisions which approve the government's non-discriminatory disallowance of federal subsidies to certain organizations. The proposal does not discriminate in its language or compass against any racial, ethnic, religious or ideological minority. The proposal does not advance or control any political opinion or belief; nor does it interfere with or influence anyone's vote. In short, the proposal does not act to stifle or restrict political advocacy.

The proposal does prevent government subsidization of political ideologies or even the appearance of same. It prohibits all tax exempt, political advocacy groups from obtaining government funds. This restriction against political subsidization is fully in keeping with "the policy that the United States Treasury should be neutral in political affairs and that substantial activities directed to attempts to influence legislation should not be subsidized." Haswell v. United States, 500 F.2d 1133, 1140 (Ct. Cl. 1974) (footnote omitted). As to the concern of apparent governmental non-neutrality, there is no question that "the avoidance of the appearance of improper influence 'is also critical . . . if confidence in the system of representative Government is not to be eroded to a disasterous extent.'" Buckley v. Valeo, 424 U.S. 1, 27 (1976) (citation omitted) (upholding constitutionality of certain provisions of the Federal Election Campaign Act).

II

LEGAL BASIS FOR PROPOSAL

A. IT IS UNCONSTITUTIONAL TO FORCE TAXPAYERS TO SUBSIDIZE POLITICAL ADVOCACY WITH WHICH THEY DO NOT AGREE.

The nature and volume of federal activity through grantees and contractors has increased dramatically over the last quarter century. Concomitantly, the necessity for sound management and monitoring of federal grants and contracts, and the activities which they foster, has become obvious -- especially in consonance with the President's desire and duty to insure efficient and economical functioning of the executive branch of government. Be the funding direct, indirect or incidental, once an organization receives government funds, the populace tends to view it, in many respects, as an appendage of the government. The fiscal management responsibilities of the government, *vis-a-vis* the organization's activities, should be on an equal level of importance as in the circumstance where the government is itself directly performing the activity.

Recently, the use of federal funds for political advocacy by grantees and contractors has been identified as a problem by members of the public, the press, by the Comptroller General, and by members of Congress. Many of these parties have observed that the diversion of federal funds, the diversion of equipment procured with federal funds and the diversion of personnel compensated by federal funds, to political advocacy constitutes an abusive, uneconomical, inefficient and inappropriate use of the public trust. Commingling federal grant or contract activity with private political advocacy creates the appearance of federal support for particular positions in public debate. This is wholly contrary to the First Amendment and its "underlying premise that a complete hands-off policy on the part of government is at times the only course consistent with First Amendment rights." *Cammarano v. United States*, 358 U.S. 498, 515 (1959) (Douglas, J., concurring). As noted by the U.S. Supreme Court in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943):

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion. . . ."

Cf. *Abood v. Detroit Board of Education*, 431 U.S. 209, 235 (1977) ("[a]n individual should be free to believe as he will, and that in a free society one's beliefs should be shaped by his mind and his conscience rather than coerced by the State").

Mere appearance of federal solicitude through direct or indirect fiscal support for particular political positions creates public misunderstanding and interferes with the neutral, non-ideological administration of federally funded programs. The Supreme Court recognized in United States Civil Service Commission v. National Association of Letter Carriers, supra, the Executive Branch and its agencies "[a]re expected to enforce the law and execute the programs of the Government without bias or favoritism for or against any political party or group or the members thereof." 413 U.S. at 564-65. Political campaigns should neither be paid for at public expense nor appear to be. See also 84 Cong. Rec. 9595, 9598, 9604, 9610. Nor should legislative advocacy be supported by the public coffers.

B. THERE IS NO DUTY OF GOVERNMENT TO SUBSIDIZE FREE SPEECH.

This proposal is designed to balance First Amendment rights with the legitimate governmental interest of ensuring that there is no direct or indirect governmental subsidization of private political advocacy. As to the former concern, all constituents have the First Amendment right to engage freely in speech and political expression, and to refrain from speaking, without government interference or control. The liberty to engage in free speech, however, "does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom." Harris v. McRae, 448 U.S. 297, 317-18 (1980).

With respect to the interest in governmental neutrality within the political arena, effective government functioning requires that the government not use its financial power to "tip[s] the electoral process." Elrod v. Burns, 427 U.S. 347, 356 (1976) (holding that public employees stated a valid claim for deprivation of constitutional rights where they were fired or threatened with dismissal for refusing to affiliate with political party). It is obvious that the activities of government in a democracy necessarily involve a degree of political advocacy, since government officials, in fulfilling their duty of public accountability, are expected to communicate with the electorate, explain their programs, and provide leadership and direction for the nation. While participation in certain forms of political advocacy is a necessary component of an elected or duly appointed official's legitimate business, government subsidization of political activities of politically unaccountable private organizations has no place in our system. Taxpayers should not be required, either directly or indirectly, "to contribute to the support of an ideological cause [they] may oppose." *Abood v. Detroit Board of Education*, 431 U.S. 209, 235-36 (1977) (First Amendment principles prohibited union and board of education from requiring teachers to contribute money in support of ideological cause he might oppose as condition of employment as public school teacher). Where governmental action "suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people, the First Amendment is plainly offended." *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 785-86 (1978).

On May 23, 1983, the United States Supreme Court unanimously upheld the right of the federal government not to subsidize the lobbying activities of private, nonprofit, tax-exempt organizations. In the case of *Regan v. Taxation With Representation of Washington*, 51 U.S.L.W. 4583 (1983), Taxation With Representation of Washington ("TWR"), a nonprofit corporation organized to promote what it conceived to be the "public interest" in the area of federal taxation, applied for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. The Internal Revenue Service denied the application because a substantial part of the organization's activities consisted of lobbying activity, which is not permitted by Section 501(c)(3). TWR attacked the prohibition against lobbying contained in Section 501(c)(3), claiming that it violated the First Amendment and the equal protection component of the Fifth Amendment's Due Process Clause. TWR claimed that Congress may not require an organization to refrain from lobbying activities as a condition of government subsidization.

The Supreme Court rejected TWR's contention that the federal government may not deny tax-exempt status to an organization on the ground it conducts lobbying activities. The Court began its analysis by declaring that tax exemptions are a form of government subsidy:

> "Both tax exemptions and tax-deductibility are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income."

Id. at 4584. The Court next acknowledged the correctness of TWR's argument that the government may not deny a benefit to a person because he exercises a constitutional right. Where the Court differed with TWR's position, however, was in its argument that the government must subsidize an organization that wishes to lobby or exercise a constitutional right. The Court specifically held that Congress is not required by the First Amendment to subsidize lobbying. The question whether private organizations which conduct lobbying activities should receive government funding is a policy decision to be made by Congress.

A second argument raised by TWR, and rejected by the Court, was that if Congress subsidizes some lobbying activities, such as those of veterans' organizations, it must also subsidize the lobbying of other organizations. The Court held "the case would be different if Congress were to discriminate invidiously in its subsidies in such a way as to aim at the suppression of dangerous ideas." Absent such discrimination, however, there is no constitutional requirement that private organizations be provided money with which to lobby.

The proposed restriction on government funding herein discussed was specifically sanctioned by the Supreme Court in its Regan opinion:

> "Congress could, for example, grant funds to an organization dedicated to combating teenage drug abuse, but condition the grant by providing that none of the money received from Congress should be used to lobby state legislatures.
>
> * * *
>
> Congressional selection of particular entities or persons for entitlement to this sort of largesse 'is obviously a matter of policy and discretion not open to judicial review . . . .'"

Id. at 4585.

The Supreme Court also rejected the argument made by TWR that a private organization is better able to accomplish the purpose it is receiving government subsidy to achieve if it is permitted to lobby lawmakers:

> "TWR contends that § 501(c)(3) organizations could better advance their charitable purposes if they were permitted to engage in substantial lobbying.

> This may well be true. But Congress--not TWR or this Court--has the authority to determine whether the advantage the public would receive from additional lobbying by charities is worth the money the public would pay to subsidize that lobbying, and other disadvantages that might accompany that lobbying. It appears that Congress was concerned that exempt organizations might use tax-deductible contributions to lobby to promote the private interests of their members. See 78 Cong. Rec. 5861 (1934) (remarks of Senator Reed); Id., at 5959 (remarks of Senator La Follette). It is not irrational for Congress to decide that tax exempt charities such as TWR should not further benefit at he expense of taxpayers at large by obtaining a further subsidy for lobbying."

Id. at 4586.

In summary, the Supreme Court's decision in Regan v. Taxation With Representation of Washington leaves no doubt that the federal government may choose not to fund organizations which desire to engage in lobbying activities.

C. THE PROPOSAL RELATES ONLY TO SECTION 501(C) ORGANIZATIONS.

The proposed restriction on government funding will only affect organizations which conduct lobbying activities and which have voluntarily applied for and obtained exemption from federal taxation pursuant to Section 501(c) of the Internal Revenue Code ("recipient organizations"). When Congress initially decided to make a tax-exempt status available to certain organizations, it did so because they serve desirable public purposes. See, e.g., 26 Cong. Rec. 585-86 (1894). The purpose underlying the system of subsidization through tax exemptions was expressed by Congress in 1938 as follows:

> "The exemption from taxation of money and property devoted to charitable and other purposes is based on the theory that the Government is compensated for the loss of revenue by its relief from financial burdens which would otherwise have to be met by appropriations from other public funds, and by the benefits resulting from the promotion of the general welfare."

H. R. Rep. No. 1860, 75th Cong., 3d Sess. 19 (1938). More recently, the United States Supreme Court, in *Bob Jones University v. United States*, 51 U.S.L.W. 4593 (May 24, 1983), commented on our system of tax subsidization as follows:

> "When the Government grants exemptions or allows deductions all taxpayers are affected; the very fact of the exemption or deduction for the donor means that other taxpayers can be said to be indirect and vicarious 'donors.' Charitable exemptions are justified on the basis that the exempt entity confers a public benefit--a benefit which the society or the community may not itself choose or be able to provide, or which supplements and advances the work of public institutions already supported by tax revenues. . . . The institution's purpose must not be so at odds with the common community conscience as to undermine any public benefit that might otherwise be conferred."

Under the current system, certain organizations which provide the public with services of an educational, health, charitable, financial or similar nature, designed to complement or supplement the activities of government in these areas, are granted tax subsidies. By precluding, on an even-handed basis, the use of public funds to underwrite any political advocacy whatsoever, the proposal ensures compliance with the precepts underlying organizational inclusion within Section 501(c), i.e., compelling the subject organizations "to spend currently the money which they receive for the purposes upon which their favored tax status is based." *Erie Endowment v. United States*, 316 F.2d 151, 153 (3d Cir. 1963) (footnote omitted) (quoting Chairman of the Senate Finance Committee). Providing these groups with a double benefit of tax exemption and government funding, while permitting them to engage in political advocacy financed by this subsidy, is a perversion of their raison d'etre and is *de facto* government subsidization of the political views which they espouse.

The inherent wrong in subsidization of political advocacy, and the improper impression and unbalanced impact upon the government decision-making process thereby created, is underscored by the fact many of these organizations receive their entire funding from the Federal Treasury. Hence, the taxpayer is necessarily underwriting political advocacy with which he may totally disagree, *e.g.*, *see* Bob Jones. *Id.* at 4593. A further problem with subsidized political advocacy of these groups is found in the intentional failure of Congress to authorize or appropriate government funds for this political advocacy. There are, of course, exceptions to this practice. For instance, use of federal funds for Presidential candidates has been expressly authorized. (*See also*, *e.g.*, 42 U.S.C. § 6805; 42 U.S.C. § 9501; 42 U.S.C. § 3030d(a)(10); 42 U.S.C. § 6012 and 29 U.S.C. § 796f.) Such instances are excepted from the proposal. However, the vast majority of situations which will be affected by the proposal involve use of government funds for political advocacy where there is no Congressional mandate or, in some cases, the use runs contrary to an express Congressional prohibition against use of funds for political advocacy.

The principal effect of the proposal will be that organizations voluntarily choosing to receive a tax exemption must agree to refrain from political advocacy in order to receive government funding. Groups choosing to engage in political advocacy will be required to compete for sources of financial support in the private sector. Recipient organizations will not be permitted to require or induce employees to engage in political advocacy activities, either as a formal part of job responsibilities or on their own time.

III

SUMMARY OF THE PROPOSAL

A. THE PROPOSAL GOES ONLY TO THE SOURCE OF THE PROBLEM.

The proposal applies only to "recipient organizations" (organizations which are exempt from taxation pursuant to Section 501(c) of the Internal Revenue Code and which receive government funds). Recipient organizations are prohibited from engaging in any political advocacy not specifically exempted by the proposal. Exemptions for limited political advocacy appear where particular activity is required or approved by law or directed to the continued existence of the organization.

Activities constituting political advocacy are well defined as are the particular exemptions. A recipient organization can therefore certify with certainty as to its non-involvement in political advocacy. Similarly, an organization choosing to engage in the specified activities will clearly understand its disqualification from federal funding.

The private, uncompensated political activities of the officers and employees of a recipient organization will not be affected by the proposal. So long as there is no compulsion or inducement to engage in any particular activity by the organization or by an affiliate and the activity represents only the private interests of the individual employee or officer (using his own funds on his own time), there will be no violation of this proposal.

The proposal is designed to avoid the public's apprehension that, through the use of federal contracts or grants and with respect to sides of public issues, the government has endorsed, fostered, or "prescribe[d] [as] orthodox" a particular view on such issues. *See* *West Virginia State Board of Education v. Barnette*, *supra*, 319 U.S. at 645. The definitional use of organizations enjoying tax exempt status under Section 501(c) is entirely compatible with this premise.

> "[T]here is no indication in the legislative history of these sections [of the Internal Revenue Code] that Congress intended to grant any tax-exempt organization a lobbying advantage over any others. In fact, the scant legislative history that exists is to the contrary, and suggests that Congress meant to treat the lobbying of all § 501(c) organizations equally."

Id. at 732-33. Moreover, "Congress has enormous leeway in classifying the recipients of its benefits and funds. . . ." *Id.* at 740. As acknowledged by the Supreme Court:

> "Congressional interest in prevention of the use of tax funds to support lobbying is compelling. Attempts to influence legislation are not the same as educational, charitable, religious, or scientific activities and they involve well-recognized dangers to representative Government procedures."

Haswell v. United States, *supra*, 500 F.2d at 1150.

B. THE PROPOSAL IS SELF-ENFORCING.

Requiring recipient organizations to certify, under penalty of perjury, that they are not engaged in political advocacy, places the burden on these organizations to abide by the law without the necessity of costly or extensive enforcement mechanisms. Rather than place the government in the position of scrutinizing every act and expenditure of a recipient organization to determine the amount of public funds expended on or attributable to political advocacy, the onus of primary enforcement is placed upon the organization. A recipient organization will only encounter governmental interference in its internal affairs if it is caught in an act of political advocac or if an audit determines the organization has deliberately violated the law. Hence, the proposal is the method for controlling improper use of government funds which least intrudes upon the First Amendment rights of a recipient organization.

C. THE PROPOSAL'S DISCLOSURE REQUIREMENTS WILL HAVE A SALUTARY EFFECT.

The requirement that recipient organizations and prospective recipient organizations provide information on themselves and their activities prior to any consideration of their funding and make annual disclosures thereafter enhances the public confidence that government funds are not being used for subsidization of private political views. The award of government grants and contracts and the use of funds received therefrom all too often receive little public scrutiny. Organizations which have been receiving government funds and using them for political advocacy, as well as some public officials who award these funds, prefer it this way. Were the use of government funds by some of these groups to become generally known, the public would be outraged.

The evils this proposal is designed to prevent can only occur in the dark. Hence, the shaft of sunshine the proposal will place on the grant and contract process will, in and of itself, be curative.

IV

CONCLUSION

The proposal disqualifies recipient organizations or their affiliates from receiving government funds only if they engage in political advocacy. The philosophy inherent in the proposal is clear: when federal grantees or contractors use facilities, equipment, or personnel funded in whole or in part with government funds for political advocacy, they tend to create, at a minimum, the appearance of governmental support or legitimacy for their positions. Furthermore, if federal funds are used to defray the general overhead costs of organizations engaged in political advocacy, the organization still receives a government subsidy for its political views as its other funds are freed for designated usage in the political forum. Neither occurrence is countenanced under the proposal, and the disclosure provisions included insure that organizational non-compliance will not be tolerated.

The principal effect of the proposal is that tax exempt organizations choosing to engage in political advocacy will not have federal funds available to underwrite such activity. There is no attempt in the proposal, either explicit or implicit, to suppress or limit the First Amendment rights of recipient organizations. Scrupulously avoided are any labels or classifications which could be interpreted as an infringement on political speech. There is, for example, no impermissible classification according tax benefits to lobbying by some tax-exempt groups but not others which does not withstand constitutional scrutiny. Likewise, there is no limitation on the funds which an organization can spend on its political advocacy activities, so long as it has no tax exemption and does not receive government monies. What is being accomplished is that government funds are insulated from usage in these circumstances, consistent with the notion that a "refusal to fund protected activity, without more, cannot be equated with the imposition of a 'penalty' on that activity." Harris v. McRae, supra, 448 U.S. at 317 n.19.

There is no "penalty" exacted by the proposed revision in connection with the exercise of First Amendment rights precisely because the proposed revision eschews any direct or indirect regulation of speech. Plainly, the proposal is not "'aimed at the suppression of dangerous ideas.'" Speiser v. Randall, 357 U.S. 513, 519 (1958). The proposal is aimed at ensuring government impartiality with respect to support of lobbying activities. As noted by the Supreme Court in Cammarano v. United States, supra, 358 U.S. at 513:

> "[S]ince purchased publicity can influence the fate of legislation which will affect, directly or indirectly, all in the community, everyone in the com-

munity should stand on the same footing as regards its purchase so far as the Treasury of the United States is concerned."

In conclusion, the proposal engenders the same belief in limitation on federal government entanglement with partisan private political activity which was posited early in this country's history by Thomas Jefferson. In response to Jefferson's directive, the heads of the executive departments issued an order which recognized the right of each executive officer to vote, but also included the following mandate:

> "[i]t is expected that he will not attempt to influence the votes of others nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution and his duties to it."

10 J. Richardson, Messages and Papers of the Presidents 98-99 (1899). There is no sound reason to depart from that philosophy.

QUESTIONS AND ANSWERS CONCERNING S. 1405

PREPARED BY LAWRENCE J. STRAW, JR.

Question. What is the purpose of "The Federal Neutrality Act"?

Answer. "The Federal Neutrality Act," S. 1405, is designed to ensure that the assets of the federal government are not used to advocate any particular political point of view. When the Bill is passed, the Federal Treasury will be neutral on matters of political advocacy.

Question. Who is covered by the Act?

Answer. All groups which have voluntarily sought and received the benefit of tax exempt status from the federal government, so-called 501(c) groups, who also receive government funds and/or in-kind government support. The Act defines these groups as "recipient organizations."

Question. Why is the Act limited to 501(c) organizations?

Answer. Under our tax system, certain organizations which are established to provide the public with services of an educational, charitable, financial or similar nature, designed to complement or supplement the activities of government in these areas, are granted a tax exemption which the Supreme Court has ruled is a subsidy. The underlying purpose of this tax exemption is to compel the organizations to spend currently the money which they receive for the purposes upon which their favored tax status is based. Providing recipient organizations the opportunity to engage in political advocacy with a double benefit of tax exemption and government funding is a perversion of their raison d'etre and a *de facto* government subsidization of their political views.

Question. Why is it improper for recipient organizations to use government funds for political advocacy?

Answer. The use of government funds for political advocacy by recipient organizations is improper for several reasons. First, the expenditure of government funds to promote private political views is outside of the intent of Congress when particular programs are authorized. Second, the use of federal money for political advocacy creates the impression if not the fact of government support for particular political points of view, thereby adding an air of legitimacy to these views. Third, it is the "spoils system" carried to an extreme. That is, government bureaucrats often provide funds to their cronies, who manage recipient organizations, in exchange for past or future political support and with the explicit or implicit understanding that if their roles are later reversed, the largesse will continue. Finally, where tax-exempt organizations are using government funds for their private political advocacy, they are "double dipping," that is, they are receiving a double tax-paid benefit which assists them to espouse their private political viewpoint.

Question. Will this Act absolutely prohibit the recipient organizations from lobbying?

Answer. No, for two reasons. First, they are permitted, under the terms of express exemptions in the Act, to lobby on matters relating to: their very existence, their tax exempt status, their powers and duties, their application for government grants or contracts, or upon matters where Congress has specifically directed and/or sanctioned political advocacy in connection with certain programs. Second, if a group wants to engage in political advocacy in connection with matters not specifically exempted by the Act, the group can either give up its tax exempt status or give up receipt of government funds. This gives a group an opportunity to weigh the importance of the issue it seeks to lobby in relation to the benefits the group receives from the government in terms of tax exemption and government funding.

Question. Is lobbying by recipient organizations all that the Act prohibits?

Answer. No. The Act prohibits the recipient organizations from engaging in "political advocacy." Political advocacy is defined with precision in the Act and includes: attempting to influence elections, "grass roots" lobbying, legislative or executive lobbying, use of the courts in litigation other than that where the recipient organization has standing to sue in its own rights, financial support of organizations which engage in political advocacy, and helping in the conduct of strikes or boycotts.

Question. Isn't it unconstitutional to prevent recipient organizations from engaging in political advocacy?

Answer. On the contrary, it is unconstitutional to permit them to engage in political advocacy. In the recent case of *Bob Jones University* v. *United States*, the Supreme Court noted that, "When the Government grants exemptions or allows deductions, all taxpayers are affected; the very fact of the exemption or the deduction for the donor means that other taxpayers can be said to be indirect and vicarious 'donors'." In 1977, the Supreme Court ruled in *Abood* v. *Detroit Board of Education* that it was unconstitutional to require teachers to contribute to a union where the dues were used to support ideological causes the teacher opposed. The court said, taxpayers should not be required, either directly or indirectly, "to contribute to the support of an ideological cause [they] may oppose." Where recipient organizations receive both a tax exemption and government funding and then use government funds to engage in political advocacy, it is clear the government, and hence the taxpayers, is supporting the political views advocated by the recipient organization. The Supreme Court noted several years ago in *First National Bank of Boston* v. *Bellotti* that where governmental action "suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people, the First Amendment is plainly offended."

Question. How is the First Amendment offended by recipient organizations engaging in political advocacy?

Answer. Freedom of speech occupies a central role in the political fabric of our nation. The significance placed upon this freedom is obvious from the fact it was guaranteed in the First Amendment. But, the right of free speech involves more than just the right to speak, it also includes the right *not* to speak. Not to support causes or ideologies with which you do not agree. Where tax dollars are used to support and subsidize political points of view, with which the taxpayer does not agree, the taxpayer's rights of free speech are violated.

Question. If the primary source of support for recipient organizations is government funds, how can these organizations exercise their First Amendment rights without the government funds?

Answer. There is no duty on the part of government to subsidize a constitutional right. In *Harris* v. *McRae*, the Supreme Court ruled the liberty to engage in free speech, "does not confer an entitlement to such funds as may be necessary to realize all of the advantages of that freedom." If recipient organizations are unable to gather the public support necessary to receive financial support for their political viewpoints for the private sector, like any other group or citizen, the government has no duty to provide resources.

Question. Isn't this an unconstitutional attempt to limit the freedom of speech of the recipient organizations?

Answer. No. There is not attempt in the Act, either implicit or explicit, to suppress or limit the First Amendment rights of recipient organizations. For example, there is no classification according to some tax exempt groups but not to others which does not withstand constitutional scrutiny. It applies to all receipient organizations, regardless of their place on the political spectrum or the content of their political advocacy. Recipient organizations are free to engage or not engage in political advocacy, as they see fit. They would just be prevented from receiving a double tax paid subsidy for their political activities.

Question. Won't this Act require a massive bureaucracy to enforce it?

Answer. The Act is self-enforcing. It requires recipient organizations to self-certify, under penalty of perjury, when they apply for government funds and annually for as long as they continue to receive the funds that they do not engage in political advocacy. It also requires various disclosures by these organizations, in its "sunshine" provision, which will identify any improper political advocacy. An audit will be performed upon each recipient organization on an annual basis to determine whether they have abided by the prohibition upon political advocacy. The audit process will be relatively simple . . . did the organization engage in political advocacy or didn't it.

Question. What are the penalties for recipient organizations engaging in political advocacy?

Answer. Any recipient organization or an officer thereof who engages in political advocacy is liable to a fine of $10,000 and/or two years in prison. Furthermore, government officials who intentionally give funds to recipient organizations engaging in political advocacy are liable for a $10,000 fine and/or two years in prison. If the government officials negligently distribute the funds to recipient organizations engaged in political advocacy, they can be discharged from employment. There are, therefore, significant penalties for violation of the Act which will act as a substantial deterrent to violations.

Senator DENTON. The first witness has a great deal of knowledge in this field, my distinguished colleague from the House of Representatives, Congressman Larry E. Craig who, as I said, is the sponsor of H.R. 4828, the companion bill to Senate 1405.

Congressman Craig, we welcome you to today's hearing and will be happy to hear your testimony at this time.

STATEMENT OF HON. LARRY E. CRAIG, A U.S. REPRESENTATIVE FROM THE STATE OF IDAHO

Mr. CRAIG. Thank you very much, Mr. Chairman.

I am pleased to be here this morning to speak in support of S. 1405, the Federal Neutrality Act. Clearly, as you mentioned in the examples that you just gave, I think it is time for Congress to concern itself on behalf of the taxpayers of this country on the use of those tax dollars by nonprofit groups for political advocacy. The American people demand accountability in Government and in the use of taxpayer dollars. This Congress has responded to that demand in the past, and I think it needs to do so again.

As you mentioned, I have introduced H.R. 4828, which is the companion bill to your legislation that is being heard before this committee today. This opportunity not only recognizes Federal expenditures and their proper use, but also protects the right of citizens' ideas in the marketplace.

The use of Federal dollars for partisanship dates back to the "spoils system." The civil service was established to prevent this abuse, and later the Hatch Act extended the same concept for employees of the Federal Government. Furthermore, Congress has made it a practice of clearly defining, through policy, when lobbying and advocacy is proper and in the public interest. These clearly defined laws include the Older Americans Act, the Developmental Disabilities Act, Head Start, and the Rehabilitation Act among others. The unauthorized use of taxpayer dollars by private nonprofit groups is unfair to all other groups, associations, and individuals who do not receive Federal moneys and share legitimate concerns in the political arena. There are many documented examples of abuse, and you have given several of them where Federal tax dollars for private political gain were used.

I sponsored this legislation to bring common sense in the use of taxpayer dollars. It requires nothing more than the recipient to use this money for the objective as outlined by Congress and refrain from political advocacy. The legislation establishes a contract between the recipient organization and the Federal Government. The contract prevents those organizations who are the recipients of Federal moneys from unfairly influencing the electorate and engaging in political advocacy.

Among the issues, of all issues, I think, of course, Senator, is the question of fairness. The use of Government funding of some ideas and groups while ignoring others is blatantly unfair, prejudicial, and discriminatory, and is contrary to the established norms of equal access to the marketplace of ideas. Senator, unless we are willing—or even capable—of subsidizing every political opinion, then neutrality in Federal expenditures must be an obvious goal. Furthermore, it involves first amendment rights. In numerous laws passed by Congress, public access and disclosure of information have been a cornerstone of policy by this Government: It has created a healthy atmosphere where the public has access to information about Government operations. But in the area of federally funded nonprofit groups, the public cannot obtain information on how their money is being spent. Must we continue this paradoxical approach to public disclosure laws?

It is only proper that recipient organizations, as your and my legislation proposes, maintain public files open for inspection on their business premises. Thereby, the public trust is reinforced and the freedom of information on the use of tax moneys is confirmed.

Lobbying is an effective way for the people to communicate with their elected officials to effect change in a positive manner. As stated by the U.S. Supreme Court last year—*Regan* v. *Taxation with Representation of Washington*—"A legislature's decision not to subsidize the exercise of a fundamental right does not infringe that right. . . ." Although the Congress has restricted certain advocacy roles of agencies and nonprofit recipient groups, it has not made a general statement on the use of Federal dollars for political advocacy. This is why I am sponsoring the companion bill in the House. I am sure this is of major concern to you in why we are viewing your bill today.

I strongly support your legislation and urge its passage in the Senate. I would be more than happy to respond to any questions that you may have, Senator.

Senator DENTON. I would not infringe on your time, Congressman Craig. We want to thank you for your appearance here this morning and for your most valuable testimony.

Mr. CRAIG. Thank you. And I am pleased you introduced into the record a variety of questions and answers that I think establish an excellent scenario as to the intent of the legislation, the ramifications of it, and the basic concept that this legislation attempts to insure the sanctity of all human rights and the proper use of the American tax dollar. Thank you very much.

Senator DENTON. Thank you, Congressman, and I hope we can continue to solicit your advice, counsel, and coordination on the passage of the bill in the House and the Senate. Thank you very much.

Mr. CRAIG. Thank you.

Senator DENTON. I will ask Mr. Richard B. Dingman, president of the Fairness Committee to come forward.

Welcome, Mr. Dingman, and if you have opening remarks, we would be happy to receive them.

STATEMENT OF RICHARD B. DINGMAN, PRESIDENT, THE FAIRNESS COMMITTEE

Mr. DINGMAN. Thank you, Senator. I appreciate the opportunity, and if I may take the liberty, I will not read all of my statement, but I would like to present most of it.

Senator DENTON. Your prepared remarks will be included in the record as if read, without objection.

Mr. DINGMAN. Mr. Chairman, the Fairness Committee is a 501(c)(4) tax exempt organization. We neither seek nor accept grants or contracts. Our primary role is to promote fairness in the use of Federal funds, in that we feel it is unfair when Federal funds are used by any external organizations to promote their views, ideology or programs.

Mr. Chairman, I am here in support of S. 1405. This bill represents a long-needed, bold new move in dealing with Federal funds transferred to external organizations for their use. By its very nature, I am sure it will evoke substantial opposition from those feeding at the trough who have their own agendas to pursue and have been enjoying the use of tax dollars in their pursuit.

Tightening the rules on those who have been misusing Federal funds or whose operations make it impossible to tell if they are properly using Federal funds will surely raise a ruckus. Opponents are already claiming first amendment violations. I will leave it to the constitutional experts to address these matters, but I feel confident these rights are fully protected and that these arguments are nothing more than a smokescreen to perpetuate the abuses of the past. I urge you and your colleagues to evaluate all arguments objectively, but vigorously pursue this type of needed fair and constitutional legislation.

This bill may not be perfect. In the process of hearings and analysis you may, indeed, discover some unintended effects which need attention. I urge you to make such changes as may be necessary. Even so, I think S. 1405 is a good starting point for the debate. As is always true in the legislative process, it may not be possible to remove all ambiguities or guarantee absolute equity, but we must not fail to do the best we can. I urge you not to allow the perfect to become the enemy of the good. Before I proceed to the body of my statement, I wish to suggest a couple of technical changes, and I will leave that, sir, to the printed testimony.

It is axiomatic that, in a democratic society, the Government must not manipulate the process by which the public's political views are expressed and their political processes operate. In a free society, there is a continuous battle in the marketplace of ideas for the hearts and minds of the citizenry. Democracy is premised on the competition of ideas and opinions. It is therefore critical to the health and stability of a free society that debate be fair, free from the dominating influence of State control or subsidy.

The substantial diversion of limited Federal resources away from intended beneficiaries into the coffers of lobbyists with individual political agendas is a significant threat to democratic decisionmaking process. The problem of Government funding of political advocacy and lobbying is pervasive and of a significant magnitude. The potential for abuse is great.

The Urban Institute estimates Government funding of private nonprofit organizations to be at least $40 billion per year. They also estimate these funds go to roughly over 100,000 nonprofit organizations across the country. The potential for abuse is staggering. In the opinion of some, the scores of fully documented instances of the illegal diversion of Federal money for political advocacy by themselves fail to illustrate the pervasive nature of abuses.

Government resources to audit these abuses are limited. The public has no access to records which would further demonstrate these abuses because the Freedom of Information Act does not apply to grantees of Federal funds. Oftentimes grant making personnel have no desire to uncover abuses committed by groups to which they provided funding.

The complexity of recipient and affiliated organizations' accounting procedures, coupled with incestuous and ineffective internal controls renders the entire process highly vulnerable to manipulation. The General Accounting Office emphasized this point when a 1982 report on the diversion of CETA funds to lobbying organizations stated that, "even with detailed audit work and a continuous monitoring effort, it would be difficult to conclusively determine that CETA funds supported lobbying." It had examples, of course, of lobbying the Congress, as Congressmen Steve Gunderson and Vin Weber can attest, and the General Accounting Office has confirmed in reports.

The Advocacy Training and Development Unit of the Legal Services Corporation suggests other means of pursuing Members of Congress. A 1981 manual entitled "Strategic and Tactical Research—Power Structure Analysis," you can see it is a rather lengthy document, this was designed to "win power and resources" for "public interest groups." Rather than addressing themselves to their prime mandate of meeting the needs of the poor in the legal arena.

This manual explains methods of "neutralizing opposition * * * through muckraking kinds of research." "Muckraking kinds of research that can put pressure on key people holding up legislation in committees of city hall, State legislatures, or Congress." The manual goes on to cite a specific example of when they went after a Congressman some years ago. Funding the use of these political techniques with Federal money is scandalous and destructive of the democratic process.

I have another manual also produced by the Legal Services Corporation entitled "The Law and Direct Citizen Action," and again you do not have to read very far to see the true purpose of this manual. It starts out in the introduction by saying "It takes power to achieve significant social change. People get power by organizing." Then there is an entire manual on how to go about organizing lobbying, et cetera. Despite tremendous difficulty in effectively auditing grant recipients, the virtual impossibility in auditing subrecipients, and the lack of vigor with which many agencies pursue these matters, scores of abuses have been uncovered in virtually every department and agency.

One particular example, and I will just briefly mention several, but there is one I want to mention at some greater length. In November 1980, immediately after the election of President Reagan, the National Legal Aid and Defenders Association sponsored a national conference at the Hilton Hotel in San Juan, PR. Not a bad place to be in November. Most of the attendees at the conference were employees of Legal Services Corporation grantees. These employees' salaries, travel and other expenses were paid with LSC funds. This conference focused on ways to utilize the resources of the attendees and their allies, including Federal grants, to organize cohesive lobbying efforts across the country to defeat anticipated Reagan initiatives. Among the projects discussed were lobbying against school prayer legislation, lobbying against draft registration, lobbying for homosexual rights, and lobbying for increased Federal spending in a wide range of programs.

Participants heard lectures about organizational matters such as the need to establish networks of lobbyists. This call to action was highlighted by an admonition for attendees to "go home and * * * talk to their Members of Congress in the House and the Senate. More importantly, not the legal service lawyers talking to them but the citizens, community groups, members of the bar, and so forth." Over the succeeding months, lobbying manuals were prepared with Federal grants, training provided, and a nationwide lobbying network established and financed with taxpayer funds to oppose President Reagan's plan to abolish the Corporation.

I already mentioned two manuals here. Another one, in 1982, the Massachusetts Poverty Law Center, Inc., published "Lobbying on a Shoestring." A complete manual on how to go about lobbying. And in the acknowledgment page, we find where it says "Thanks to the Legal Services Corporation who provided the funds for this book and has given us permission to use it." A subsequent investigation by the Legal Services Corporation about this manual drew a response from the people in Massachusetts, and I find one particular statement in their response to be rather enlightening. They say the book, being an inanimate object, does not lobby so there is no violation of any restriction on lobbying. Yet they have used Federal funds for the Legal Services chain to promote this particular book.

There are other examples, sir, in my prepared testimony. California State University funds were used there through the Department of Education to orchestrate opposition to President Reagan's budget. Vista employees in Illinois were used to oppose the Reagan program. Community Services Administration has frequently been involved; I realize that is past now, but when they were in existence, they were frequently involved in such lobbying activities. Grass-roots lobbying in Los Angeles Downtown People Mover Authority used Department of Transportation grant funds to "prepare and disseminate a newsletter encouraging readers to write their Congressmen and Senators."

Elections and recalls, there are numerous cases, including in Georgia an employee of the Legal Services Corporation actually ran for office while technically conducting door-to-door canvassing work for the grantee.

The Legal Services Corporation has frequently been involved in elections and recalls, and there has even recently been a case in California where the GAO has confirmed the Legal Services Corporation diverted one person from each of their grant organizations out there to work full time in opposition to proposition No. 9.

The Center for Community Change, a tax exempt organization that has organized the anti-Reagan fair budget action briefings, I have—I know that in recent years, in 1977, they probably have gotten some $5 million of Federal funds, and I notice that in their recent annual report, they make no bones about it, they are heavily engaged in advocacy. They talk about one of their operations building a statewide constituency and stimulating advocacy. They talk about the fair budget action campaign which is a concerted effort of many coalition members to oppose the current administration's budget priorities. The list goes on and on. The Food Research Action Center has been in the past found to be guilty of using Federal funds for lobbying and prosecution was recommended. Nothing really happened about it. The National Welfare Rights Organization received two grants from Vista to organize welfare recipients into advocacy groups in Illinois and Michigan. Advocates joined other lobbying groups to press for legislative reform. The Department of Education and a number of agencies were involved.

Time and time again, when full audits of recipient organizations are conducted, a clear pattern of abuse merges. Three illustrations prove this point.

At a strategy development meeting on February 24, 1981, attendees determined that the American Health Planning Association should lead the effort to defeat President Reagan's budget proposals. Afterward, the Association began to solicit funds from Federal grant recipient health systems agencies. In a letter directed to agency executives, AHPA President James Kinney urged contributions to the association "over and above membership dues" stating that "we must have more (money)."

I know at least one health State planning director interpreted that to mean send us your Federal money so that we can lobby Congress for more money. The Secretary of HHS then reviewed this situation and found that 14 of the 17 federally funded service agencies reviewed had illegally diverted Federal moneys for the lobbying campaign.

A General Accounting Office review of local Planned Parenthood affiliates receiving Federal grants revealed that "all seven title X recipients reviewed for lobbying had incurred expenses that, in our opinion, raised questions as to adherence with Federal restrictions on lobbying with taxpayers' money."

The Comptroller General of the United States found that 94 percent of CETA prime sponsors surveyed gave Federal dollars to membership organizations which engaged in political lobbying.

Membership organizations acknowledged that association with CETA sponsors aided lobbying efforts. Half of the CETA sponsors stated that decisions to divert jobs money to the membership organizations were based in part by the organizations' involvement in activity to influence CETA legislation.

Recipient organizations often claim that political advocacy and lobbying activities are paid for, not with Federal funds, but with private sources of revenues. This argument is based on a legal shell game. Grant recipients can use the resources which are provided by Federal funding as long as funding cannot clearly be traced to funding the illegal lobbying. The argument is particularly specious when offered by those organization which exist almost exclusively on Federal funds.

Another argument that is used is that of representing the unrepresented. Some argue that the Federal Government should fund political advocacy in order to balance the scales, by giving a more powerful voice to those currently unrepresented or underrepresented. Some argue that the funding of political advocacy promotes the type of quality debate which should occur in a democracy.

One problem is determining which persons or which ideas are unrepresented or underrepresented. Many conservative people and ideas fall in this category, including those who are for school prayer and against abortion.

Imagine the reaction in the media, however, if billions in Federal dollars were suddenly disbursed to a number of conservative organizations. Assuming such groups would accept involuntary taxpayer contributions, a roar of protest could be expected if Government agencies announced, for example, and none of these are true:

An HHS grant to the Moral Majority to train and organize prolife Christians to influence legislators at all levels of government; or

An HHS contract with American Life Lobby to assist in the preparation and dissemination of information concerning fetal traits throughout pregnancy; or

A Department of Education grant to Young Americans for Freedom to assist in sponsoring conferences and seminars relating to the need for social and political change in America; or even

An LSC grant to National Right to Work Legal Defense and Education Fund to assist lower income workers dismissed due to union abuses

Of course, the Fairness Committee would oppose these grants and contracts because they constitute government manipulation of the political process. In this scenario, however, we would expect to find new allies in our efforts.

Specific restrictions on the use of appropriated money for political advocacy have been added to legislation establishing specific programs in 41 instances in recent years.

The Congress has, on occasion, made efforts to foster the spread of political ideas but, in each instance, the Congress has taken care to ensure the complete evenhandedness of the subsidy; such as the funding of Presidential campaigns by the Federal Election Commission;

Postal subsidy for political parties including both Democrats and Republicans.

Congress, aware of the dangers inherent in government sponsored advocacy, devoted bipartisan efforts to guarantee a balanced fair approach.

As noted earlier, antilobbying provisions of the United States Code have been in force since 1919. Nevertheless, the General Accounting Office states that, to its knowledge, "there has never been a prosecution under this statute." Scores of documented violations of antilobbying requirements have resulted in a series of "requests" to return misspent funds, instructing to avoid violations in the future and very little else.

The complexity of accounting procedures utilized by grant recipients and affiliated organizations, the transfer of Government funds from grant recipients to "membership" organizations and the sheer number of grants awarded, make the task of enforcing antilobbying provisions exceedingly difficult. Indeed, the General Accounting Office has stated to the Congress that even with detailed audits and continuous monitoring, they cannot verify compliance with antilobbying provisions of a single program. Acquiring the necessary quantity and quality of evidence for criminal prosecution is, of course, even more difficult.

Even when the government does take action on violations, it is inadequate. When Government auditors identify specific violations of antilobbying political advocacy provisions of Federal laws, actions taken by the Government do not deter future violations. Criminal prosecutions are virtually nonexistent, in part because of the inconsistent and erratic application of antilobbying provisions and the lack of guidance offered by the departments and agencies. Even termination of grant eligibility is rare, as evidenced by the case of the Federation of Southern Cooperatives, a self-described resource and advocacy organization working in the rural South, which was charged with use of Federal funds for political purposes and general misuse and waste of Federal funds. During the time that an investigation of the group was being conducted by the Department of Justice, the FSC received eight additional Federal grants totaling $1.6 million from five different Government agencies.

Finally, when refunds are obtained, "Federal agencies can unknowingly accept their own or other Federal funds as payment of audit-related debts at the expense of intended program objectives. Agencies use two primary methods to recover audit disallowances—offset and cash recovery. When agencies settle debts by offsetting grantees' indebtedness against grant advance payments, they usually do not have adequate assurance that the program itself is not reduced. When audit-related debts are repaid in cash, agencies are often unaware of the effect. Payments may reduce funds available for other Federal programs."

In summary, legal prohibitions and Presidential mandates notwithstanding, recipients have every incentive to use funds as they please. Recipients are rarely audited. When they are audited, it is difficult, if not impossible, to discover funds diverted to political advocacy. When abuses are documented, prosecution is not pursued. Funds are used interest free and may never be paid back at all.

Current practices invite the diversion of millions of taxpayers' dollars into aggressive, radical advocacy campaigns which are often unable to raise funds in any other manner. Any approach which relies on the monitoring and recovery of Federal funds misspent by organizations which engage in lobbying and political advocacy is doomed to abject failure.

The only effective method of preventing the continual massive abuse of taxpayers' moral and legal rights is the denial of Federal money to groups which engage in political advocacy, training, and lobbying.

We must prevent these abuses by locking the Federal Treasury's barn door rather than engaging in futile and expensive attempts to discover, corral and return millions of "horses" after they have fled the barn.

I will be happy to respond to any questions, Senator.

[The following material was submitted for the record:]

PREPARED STATEMENT OF RICHARD B. DINGMAN

Mr. Chairman, The Fairness Committee is a 501(c)(4), tax exempt organization. We neither seek nor accept federal grants or contracts. Our primary role is to promote fairness in the use of federal funds, in that we feel it is unfair when federal funds are used by any external organizations to promote their views, ideology or programs.

I am here in support of S.1405.

Mr. Chairman, this bill represents a long needed, bold new move in dealing with federal funds transferred to external organizations for their use. By its very nature, I am sure it will evoke substantial opposition from those feeding at the trough who have their own agendas to pursue and have been enjoying the use of tax dollars in their pursuit.

Tightening the rules on those who have been misusing federal funds or whose operations make it impossible to tell if they are properly using federal funds, will surely raise a ruckus. Opponents are already claiming First Amendment violations. I will leave it to the Constitutional experts to address these matters, but I feel confident these rights are fully protected and that these arguments are nothing more than a smokescreen to perpetuate the abuses of the past. I urge you and your colleagues to evaluate all arguments objectively, but vigorously pursue this type of needed, fair and constitutional legislation.

This bill may not be perfect. In the process of hearings and analysis you may, indeed, discover some unintended effects which need attention. I urge you to make such changes as may be necessary. Even so, I think S.1405 is a good starting point for the debate. As is always true in the legislative process, it may not be possible to remove all ambiguities or guarantee absolute equity, but we must not fail to do the best we can. I urge you not to allow the perfect to become the enemy of the good.

Before I proceed to the body of my statement, I wish to suggest a couple of technical changes in S.1405.

1. I suggest the title of Rep. Craig's House companion bill would be a better description. That is, "Neutrality in Federal Expenditures Act of 1984."

2. Page 3, line 23. Recommend deleting the words, "or person employed by such entity."

3. Page 11, line 16. I suggest the requirement be changed to simply

"Have available for public review" a copy of the various publications.

4. Page 12, line 6. Change the word "assume" to "assure."

5. Page 14, line 4. Insert "or its agents" after "organization."

6. Page 14, line 6. Insert "organization or" after "recipient."

7. Page 14, line 8. Insert "or organization" after "person."

8. Page 15, lines 11-14. Please clarify that any amounts recovered go to the federal treasury and not to a private citizen who brought suit.

I. INTRODUCTION

A. A Free Society

It is axiomatic that, in a democratic society, the Government must not manipulate the process by which the public's political views are expressed and their political processes operate. In a free society, there is a continuous battle in the marketplace of ideas for the hearts and minds of the citizenry. Democracy is premised on the competition of ideas and opinions. It is, therefore, critical to the health and stability of a free society that debate be fair, free from the dominating influence of state control or subsidy. The Heritage Foundation summarized this principle as follows:

> "When government funds legislative advocacy by outside groups, the state abandons its duty of neutrality between pressure groups in a democracy. By funding one ideological position and refusing to fund alternative views, the state is using its massive economic and institutional resources to intervene in the democratic process. Government should spend money to implement the decisions of the political process, not to formulate it." [Heritage Foundation, Agenda 1983]

The substantial diversion of limited federal resources away from intended beneficiaries into the coffers of lobbyists with individual political agendas is a significant threat to democratic decision making.

B. Opportunity for Abuse

The problem of Government funding of political advocacy and lobbying is pervasive and of a significant magnitude. The potential for abuse is great.

The Urban Institute estimates government funding of private nonprofit organizations to be at least $40 billion per year. Another estimate, by Loren Smith, Chairman of the Administrative Conference of the United States, concludes that federal domestic grant spending exceeds $100 billion anually. [Recommendation 82-2 ACUS, Adopted June 17, 1982]. The Urban Institute notes that the largest share of these funds are distributed to over 100,000 nonprofit organizations across the country [Federal Budget and the Nonprofit Sector, 1982, the Urban Institute Press at 42].

The potential for abuse is staggering. In the opinion of some, the scores of fully documented instances of the illegal diversion of federal money for political advocacy by themselves fail to illustrate the pervasive nature of abuses.

- Government resources to audit these abuses are limited.
- The public has no access to records which would further demonstrate these abuses because the Freedom of Information Act does not apply to grantees of federal funds.
- Often times, grant making personnel have no desire to uncover abuses committed by groups to which they provided funding.
- The complexity of recipient and affiliated organizations' accounting procedures, coupled with incestuous and ineffective internal controls renders the entire process highly vulnerable to manipulation.

The General Accounting Office emphasized this point when a 1982 report on the diversion of CETA funds to lobbying organizations stated that, "even with detailed audit work and a continuous monitoring effort, it would be difficult to conclusively determine the CETA funds supported lobbying." (Emphasis added.) (October 29, 1981, HRD-82-5.)

C. Lobbying the U.S. Congress

Members of Congress are frequent targets of government-funded political activists. Congressmen Steve Gunderson (R-Wisc.) and Vin Weber (R-Minn.) can attest to anti-Reagan lobbying, funded with Community Services Agency Funds, directed at influencing their votes. Mass mail campaigns and anti-Reagan brochures were subsidised with Congressionally-appropriated money, and the CSA Inspector General and the General Accounting Office confirm these stories.

The Advocacy Training and Development Unit of the Legal Services Corporation suggests other means of pursuing members of Congress. A 1981 manual entitled Strategic and Tactical Research -- Power Structure Analysis was designed to "win power and resources" for "public interest groups." The manual explains methods of "neutralizing opposition... through muckraking kinds of research." "Muckraking kinds of research can put pressure on key people holding up legislation in committees of

City Hall, state legislatures, or Congress." (P.16.) The manual cites the 1974 Congressional Campaign of then-Congressman Joel Broyhill (R-Va.) when Ralph Nader's Tax Reform Research Group released material "a few days before an election in which Broyhill was running for re-election." Funding the use of these political techniques with federal money is scandalous and destructive of the democratic process.

Investigations into the illegal diversion of federal funds for political advocacy are invariably met with claims that abuses are isolated, sporadic and not reflective of a serious problem.

Despite tremendous difficulty in effectively auditing grant recipients, the virtual impossibility in auditing sub-recipients, and the lack of vigor with which many agencies pursue these matters, scores of abuses have been uncovered in virtually every Department and Agency dispensing federal grants. The blatant illegalities currently being uncovered in the Legal Services Corporation are only the tip of the iceberg. Funds from the Departments of State, Labor, Commerce, Justice, HUD, Health and Human Services, Transportation, and Education, the National Endowment for the Humanities and many other agencies are routinely channeled, often undetected, into lobbying and advocacy campaigns.

II. THE FEDERAL GOVERNMENT FUNDS EXTENSIVE POLITICAL ADVOCACY

A. Organizing to Oppose the Reagan Administration (Legal Services Corporation)

In November of 1980, immediately after the election of President Reagan, the National Legal Aid and Defenders Association sponsored a national conference at the Hilton Hotel in San Juan, Puerto Rico. Most of the attendees at the conference were employees of Legal Services Corporation grantees. These employees' salaries, travel and other expenses were paid with LSC funds. This conference focused on ways to utilize the resources of the attendees and their allies, including federal grants, to organize cohesive lobbying efforts across the country to defeat anticipated Reagan initiatives. Among the projects discussed were lobbying against school prayer legislation, lobbying against draft registration, lobbying for homosexual rights, and lobbying for increased federal spending in a wide range of programs.

Participants heard lectures about "organizational" matters such as the need to establish "networks" of lobbyists. This call to action was highlighted by an admonition for attendees to "go home and...talk to their members of Congress in the House and the Senate. More important[ly], not the legal services lawyers talking to them but the clients, community groups, members of the Bar and so forth."

Over the succeeding months, lobbying manuals were prepared with federal grants, training provided, and a nationwide lobbying network established and financed with taxpayer funds to oppose President Reagan's plan to abolish the Corporation.

B. Lobbying Manuals (Legal Services Corporation)

Subsequent to that conference, the Legal Services Corporation has produced a number of high quality "how to" books on lobbying elected office holders, in violation of Congressionally-mandated restrictions on lobbying with Legal Services Corporation funds.

In December 1981 the Office of Program Support in the LSC national office published Getting the Greatest Benefit from your Legislator: A Training Program for Legal Services Advocates. One section of this manual advocates bringing legislators to meet with local community representatives to "demonstrate to a legislator how [a client group] operates as a collective force in the community." (p. 2.)

In 1982 the Massachusetts Poverty Law Center, Inc., published Lobbying on a Shoestring. The acknowledgments page states that this manual was based on a 1979 handbook for participants in legislative advocacy training conferences sponsored jointly by Massachusetts Law Reform Institute and Greater Boston Legal Services, both of which receive substantial LSC funding. The acknowledgments conclude: "[a]lso, thanks to the Legal Services Corporation who provided the funds for this book and has given us permission to use it." (Emphasis added.)

C. Political Propaganda (National Endowment for the Humanities)

William Bennet, Chairman of the National Endowment for the Humanities, recently agreed with charges from the Anti-Defamation League of B'nai B'rith that a film produced entirely at Government expense was "unabashed propaganda for the Palestine Liberation Organization."

Bennet states that the National Endowment had "no rightful business funding" the political documentary. (Jewish Press, July 8, 1983.)

Additionally, in the past two years, the Government Accounting Office has studied this problem on several occasions. The Comptroller General of the United States has fully documented and reported numerous examples of taxpayer funded political advocacy. Here are some examples.

D. Reagan Budget Opposition (Department of Education)

California State University, Northridge, utilized federal funds to orchestrate opposition to President Reagan's budget proposals. These federal funds were intended to administer the federal student loan programs. "Students were provided sample letters, stationery and postage...in violation of applicable appropriation act restrictions." The Comptroller General noted that "similar activities may have been carried out at other institutions." (Letter from GAO Director, Human Resources Division, to Hon. Bobbi Fiedler, August 9, 1982, B-208465).

E. Reagan Economics Opposition (VISTA)

An Illinois Public Action Council VISTA Supervisor, a full-time federal employee, also worked as an associate director for the Illinois Coalition Against Reagan Economics. The same General Accounting Office report stated that VISTA volunteers assigned to a community organization were, in fact, "engaged in a labor action organizing drive." (Letter from Acting Director GAO, Accounting and Financial Management Division, to Hon. Henry Hyde, October 14, 1982, 911546.)

F. Disregard of Congressional Restrictions on Political Advocacy (Community Services Administration)

The Community Services Administration improperly advised its grantees to disregard Congressionally-mandated political advocacy restrictions on grant recipients. Among "widespread reports of lobbying activity among recipients," the General Accounting Office cited mass mailings prepared by a grant recipient urging readers to mount a campaign to lobby the Congress as a violation of legislative restrictions. (Decision of the Comptroller General of the U.S., May 1, 1981, B-202787.) The mailing, on Community Services Agency letterhead, was directed at Congressman Vin Weber (R-Minn.) in the Spring of 1981. After receiving complaints from Congressman Steve Gunderson (R-Wisc.), the CSA Inspector General verified that the West Central Wisconsin CSA, Inc. was similarly using federal money and resources to circulate anti-Reagan brochures and letters during 1981. (Letter from Acting Inspector General of CSA to Hon. Steve Gunderson, July 2, 1981.)

G. Grass Roots Lobbying (Department of Transportation)

The Los Angeles Downtown People Mover Authority used Department of Transportation grant funds to "prepare and disseminate a newsletter encouraging readers to write their Congressmen and Senators in support of a continuation of Federal funding for the Los Angeles People Mover project." The GAO noted that the expenditures were "in violation of appropriation act restrictions." (November 3, 1981, Letter to Congressman Bobbi Fiedler from Acting Comptroller General, B-202975).

H. Elections and Recalls (Legal Services Corporation)

A staff attorney with a Legal Services Corporation funded grantee in Washington State, Evergreen Legal Services, participated in a recall effort against two publicly elected Clallam County Public Utility District Commissioners. This violated LSC regulations which forbid local programs to particpate in elections or recalls. The attorney participated in the recall drive on behalf of his client Irate Ratepayers, an organization eligible under LSC regulations for free LSC legal assistance.

In Wadley, Georgia, an employee of a local Legal Services Corporation grantee ran for office while technically conducting door to door canvassing work for the grantee. (Washington Post, July 26, 1983)

Thomas Jefferson recognized the fundamental nature of this issue when he noted in the Virginia Declaration of Religious Liberty (1777), "to compel a man to furnish funds for the propagation of ideas he disbelieves is sinful and tyrannical."

Yet the illustrations provided here are merely exemplative of the massive, government-wide abuse of taxpayer's legal and moral rights.

I. Political Advocacy Through Networking and Training

The problem of taxpayer funded political advocacy becomes even more acute when coalitions of recipient organizations are formed.

The Organization of Chinese American Women received a federal grant to hold a national conference in Washington during June of 1983. The agenda included a seminar on "political action and participation" as well as an organized "visit to Capitol Hill and meetings with legislators." The conference site, equipment and related expenses were underwritten by the Department of Education through the Women's Educational Equity Act program.

The Center for Community Change, a tax-exempt nonprofit welfare advocacy group organized the anti-Reagan Fair Budget Action briefings in 1982. The Center established the Ad Hoc Coalition Against Block Grants and has been especially active in lobbying in support of CETA funds. The Center, a recipient of millions in federal grants, continues to enjoy taxpayer subsidies during the Reagan Administration, including some $452,000 in 1982.

At least fifteen federally funded groups have organized to promote a U.S. nuclear freeze.

The Coalition for Legal Services, a network of nation-wide grant recipients, was funded at taxpayer's expense to defeat legislation restructuring the Legal Services Corporation. It received a $40,000 grant from the Project Advisory Group, which itself is funded by dues paid by each local program, calculated as a percentage of the total Legal Services Corporation grant.

More than 100 social groups, many of which receive federal money, have formed the Coalition on Block Grants and Human Needs. Carolyn Brickey, professional lobbyist for the Food Research and Action Center (FRAC), explains that Coalition members meet over lunch to coordinate strategy and "will sometimes schedule visits to a Congressman in waves, one each half hour, so we look like a bigger army than we are." [In 1980, the General Accounting Office determined that FRAC had twice violated federal laws and regulations in diverting federal grant money for mass mailing lobbying campaigns.]

In 1982, two-thirds of FRAC's funding was derived from the federal treasury, including a grant "that will allow seven (as yet unnamed) budget coalitions to convene regional conferences focusing on national economic policies, their political and social implications and appropriate response by advocates for the poor, minorities, organized labor, etc."

Other coalitions of federally funded organizations have been formed to combat Presidential initiatives in Cental America and to protest Administration civil rights initiatives.

In many instances, federal funds are being used not just to lobby but to indoctrinate, train and organize political activists.

> The Citizen/Labor Energy Coalition was awarded a grant from the Community Services Administration to organize 300 to 500 low-income consumers into energy activists.
>
> The National Welfare Rights Organization received two grants from VISTA to organize welfare recipients into advocacy groups in Chicago, Illinois and Pontiac, Michigan. The newly trained activists join other lobbying groups to press for legislative reform.
>
> B.A.B.E.L., Inc. received a two year Campesinas (female farm workers) project grant from the Department of Education. The "Leadership Training Manual" of the Campesinas project includes such topics as community organization and advocacy at the local government level. The program documents state that "it is necessary to inform and influence legislators at every level...."

III. RESPONSES TO CERTAIN COMMON ARGUMENTS FOR THE STATUS QUO

A. Pattern of Abuse

Time and time again, when full audits of recipient organizations are conducted, a clear pattern of abuse emerges. Three illustrations prove this point.

At a "Strategy Development Meeting" on February 24, 1981, attendees determined that the American Health Planning Association should lead the effort to defeat President Reagan's budget proposals. Afterward, the Association began to solicit funds from federal grant recipient health systems agencies. In a letter directed to agency executives, AHPA President James Kinney urged contributions to the Association "over and above membership dues" stating that, "we must have more [money]." A hand-written note at the bottom of the fund-raising letter made the request clear. One state health planning director said Kinney's letter meant, "send us your federal money... to lobby Congress for more federal money." The Secretary of Health and Human Services determined that fourteen of the seventeen federally-funded Health Services Agencies reviewed illegally diverted federal monies for the lobbying campaign. (letter from HHS Secretary Schweiker to Senator Gordon J. Humphrey, May 29, 1981.)

A General Accounting Office review of local Planned Parenthood affiliates receiving federal grants revealed that "all seven Title X recipients reviewed for lobbying had incurred expenses that, in our opinion, raised questions as to adherence with federal restrictions on lobbying with taxpayer's money." (Emphasis added.) (October 1, 1982, B-206416.)

The Comptroller General of the United States found that 94 percent of CETA prime sponsors surveyed GAVE federal dollars to membership organizations which engaged in political lobbying. Membership organizations acknowledged that association with CETA sponsors aided lobbying efforts. Half of the CETA sponsors stated that decisions to divert jobs money to the membership organizations were based in part by the organizations' involvement in activity to influence CETA legislation. In some cases, the CETA sponsors were found to be directly involved with creating the membership organization's lobbying platform. (October 28, 1981, B-200492.)

B. The Other Pocket

Recipient organizations often claim that political advocacy and lobbying activities are paid for, not with federal funds, but with private sources of revenues. This argument is based on a legal shell game. Grant recipients can use the resources which are provided by Federal funding as long as funding cannot clearly be traced to funding the illegal lobbying. The argument is particularly specious when offered by those organizations which exist almost exclusively on federal funds.

C. Representing the Unrepresented

Some argue that the federal government should fund political advocacy in order to balance the scales, by giving a more powerful voice to those currently unrepresented or underrepresented. Some argue that the funding of political advocacy promotes the type of quality debate which should occur in a democracy.

One problem is determining which persons or which ideas are unrepresented or underrepresented. Many conservative people and ideas fall in this category, including those who are for school prayer and against abortion.

Imagine the reaction in the media, however, if billions in federal dollars were suddenly disbursed to a number of conservative organizations. Assuming such groups would accept involuntary taxpayer contributions, a roar of protest could be expected if Government agencies announced, for example:

> An HUD grant to the Moral Majority to train and organize pro-life Christians to influence legislators at all levels of government.
>
> An HHS contract with American Life Lobby to assist in the preparation and dissemination of information concerning fetal traits throughout pregnancy.
>
> A Department of Education grant to Young Americans for Freedom to assist in sponsoring "conferences and seminars" relating to the need for social and political change in America.
>
> CETA contracts to the National Right to Work Legal Defense and Education Fund to "foster a climate in which additional jobs may be created" including promotion of a national right to work law.
>
> An LSC grant to National Right to Work Legal Defense and Education Fund used to assist lower income workers dismissed due to union abuses.
>
> Of course, the Fairness Committee would oppose these grants and contracts because they constitute Government manipulation of the political process. In this scenario, however, we would expect to find new allies in our efforts.

The politically active National Council of Senior Citizens, organized by the AFL-CIO, received $50 million of its $52 million budget from the federal treasury. The Council, currently pressing for a U.S nuclear freeze and realignment of federal budget priorities, contends that all of its extensive lobbying activities (independent and coalition advocacy) are fully paid for by the $2 million of non-federal money it received.

The Heritage Foundation reports that the African-American Institute, a vigorous supporter of the Soviet backed Popular Movement for the Liberation of Angola, receives more than 80 percent of its revenues from U.S. taxpayers. The American public has paid $135 million to the Institute to date.

The National Council for LaRaza joined other tax-funded groups marching on the White House in protest of Administration budget policies. According to its own documents, LaRaza "carries out research, public policy analysis and advocacy at the national level...." At least 78 percent of the Council's 1982 funding was from grants awarded by the Departments of Commerce, Housing and Urban Development, Justice, Labor, Health and Human Services, and Education.

IV. CURRENT STATUS

Several provisions in federal statutes prohibit the use of federal money for political advocacy and lobbying. The Civil Service System, the Federal Corrupt Practices Act, and the Hatch Act are examples of legislative efforts preventing the establishment of political machines with the taxpayer's money. Additionally, there is the Prohibition of Contributions or expenditures by national banks, corporations, or labor organizations. 2 U.S.C. §441b. And the prohibition of contributions by government contractors. 2 U.S.C. §441c. In fact, the prohibition against government prescribed political orthodoxy has been specifically noted by the U.S. Supreme Court.

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics...or other matters of opinion." West Virginia State Board of Education v. Barnette, 319 U.S. 624, 642 (1943).

In 1919, the Congress made it a federal crime to lobby with appropriated funds.

> "No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letters, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress...." [18 U.S.C. §1913.]

In recent years, Congress has expanded this prohibition to include "grass roots" lobbying.

> "No part of any appropriation contained in this or any other Act, or of the funds available for expenditure by any corporation or agency, shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress." [Section 607(a) of the Treasury, Postal Service and General Government Appropriations Act. Most recently at §607(a), Treasury Postal Serv., and Gen. Gov't Appropr. Act, 1980, 93 Stat. 559, 575.]

Specific restrictions on the use of appropriated money for political advocacy have also been added to legislation establishing specific programs in forty-one instances in recent years.

The Congress has, on occasion, made efforts to foster the spread of political ideas, but in each instance the Congress has taken care to insure the complete even-handedness of the subsidy.

- Funding of Presidential Campaigns by the Federal Election Commission (26 U.S.C. §9001-9013).
- Postal subsidy for political parties including both Democrats and Republicans (39 U.S.C. §3626)

Congress, aware of the dangers inherent in government-sponsored advocacy, devoted bipartisan efforts to guarantee a balanced, fair approach.

The illegal diversions of federal grants and contracts for purposes of lobbying and advocacy, however, are anything but balanced. Consider the results of a recent study conducted by George Washington University's Professor Robert Lichter and Smith College's Professor Stanley Authmen. In a scientifically conducted survey of views held by "public interest" leaders, a remarkable consensus emerges. In the past four Presidential races, 2 percent of those surveyed voted for Nixon in 1968, 96 percent voted for McGovern in 1972, 3 percent voted for Ford in 1976 and 2 percent voted for President Reagan in 1980.

Additionally, 50 percent of those surveyed expressed approval of the Marxist Sandinistas. Seven times as many persons surveyed approved of Communist dictator Fidel Castro as approved of President Ronald

Reagan (34 percent to 5 percent). Fully 90 percent of public interest leaders strongly disapproved of President Reagan. On the question of abortion, 95 percent of those surveyed were in favor of abortion on demand. Perhaps most startling, only 3 percent think that U.S. military strength should be the strongest in the world.

The complete imbalance of views expressed by those running so-called public interest groups dictates the necessity for assuring balance and fairness in the use of federal grant funds.

Congressional blind spot.

A Federal Court has stated that

> ...it appears to us to express a determination by Congress that since purchased publicity can influence the fact of legislation which will affect, directly or indirectly, all in the community, everyone in the community should stand on the same footing as regards its purchase so far as the Treasury of the United States is concerned. [Taxation with Representation v. United States, 585 F.2d 1219, 1223 (1978), cert. denied, 441 U.S. 905 (1979).]

Despite long-standing prohibitions and specific direction from President Reagan, the Congress and the courts, federal money continues to finance the manipulation of our democratic processes.

V. AN EXAMINATION OF THE INADEQUACIES OF THE CURRENT AND PROPOSED APPROACHS TO RESOLVING THE EXISTING PROBLEM.

As noted earlier, anti-lobbying provisions of 18 U.S.C. §1913 have been in force since 1919. Nevertheless, the General Accounting Office states that, to its knowledge, "there has never been a prosecution under this statute."

Scores of documented violations of anti-lobbying requirements have resulted in a series of "requests" to return misspent funds, instructing to avoid violations in the future and very little else.

A. Difficulty in monitoring abuses

The complexity of accounting procedures utilized by grant recipients and affiliated organizations, the transfer of government funds from grant recipients to "membership" organizations and the sheer number of grants awarded, make the task of enforcing anti-lobbying provisions exceedingly difficult.

Indeed, the General Accounting Office has stated to the Congress that even with detailed audits and continuous monitoring, they cannot verify compliance with anti-lobbying provisions of a single program. Acquiring the necessary quantity and quality of evidence for criminal prosecution is, of course, even more difficult. (Supra.)

The proposed revisions to OMB Circular A-122 would only compound the existing accounting quagmire.

B. Inadequate action taken when violations are confirmed

When Government auditors identify specific violations of anti-lobbying political advocacy provisions of federal laws, actions taken by the Government do not deter future violations. Criminal prosecutions are virtually non-existent, in part because of the inconsistent and erratic application of anti-lobbying provisions and the lack of guidance offered by the departments and agencies. Even termination of grant eligibility is rare, as evidenced by the case of the Federation of Southern Cooperatives (FSC), a self described resource and advocacy organization working in the rural South, which was charged with use of federal funds for political purposes and general misuse and waste of federal funds. During the time that an investigation of the group was being conducted by the Department of Justice, the FSC received eight additional Federal grants totaling $1.6 million from five different Government agencies.

In fact, the Comptroller General has verified that in many cases, the Government is unable to obtain refunds of the illegally diverted money. Specifically, GAO notes federal agencies--"are inappropriately 'forgiving' millions of dollars of audit-related debts without a reasonable collection effort as required by the Federal Claims Collection Standards—have allowed legitimate appeal processes to be used by grantees to delay payment of their debts, thus retaining Federal Funds at a cost to the Government of millions of dollars and— have not charged interest over the last three years on hundreds of millions of dollars in delinquent debts although required to charge interest by the Federal Claims Collection Standards."

Finally, when refunds are obtained, "federal agencies can unknowingly accept their own or other federal funds as payment of audit-related debts at the expense of intended program objectives. Agencies use two primary methods to recover audit disallowances—offset and cash recovery. When agencies settle debts by offsetting grantees' indebtedness against grant advance payments, they usually do not have adequate assurance that the program itself is not reduced. When audit-related debts are repaid in cash, agencies are often unaware of the effect. Payments may reduce funds available for other Federal programs." When Federal dollars are channeled through recipients to sub-grantees, the Government "rarely pursue(s) collection" of funds known to have been misspent.

In summary, legal prohibitions and Presidential mandates notwithstanding, recipients have every incentive to use funds as they please.

Recipients are rarely audited.

When they are audited, it is difficult if not impossible to discover funds diverted to political advocacy.

When abuses are documented, prosecution is not pursued.

Funds are used interest free and may never be paid back at all.

Current practice invites the diversion of millions of taxpayers' dollars into aggressive, radical advocacy campaigns which are often unable to raise funds in any other manner.

VI. SOLUTION

Any approach which relies on the monitoring and recovery of federal funds misspent by organizations which engage in lobbying and political advocacy is doomed to abject failure.

The only effective method of preventing the continual massive abuse of taxpayers' moral and legal rights is the denial of Federal money to groups which engage in political advocacy, training and lobbying.

As the chief accountant of the U.S. Government, the Comptroller-General, cannot insure the proper segregation of funds, even with continuous monitoring, the only alternative is to deny funds to those nonprofit groups which engage in lobbying activities.

We must prevent these abuses by locking the federal Treasury's barn door rather than engaging in futile (and expensive) attempts to discover, corral and return millions of "horses" after they have fled the barn.

Senator **Denton**. Well, Mr. Dingman, that is a very comprehensive indictment of that which this bill is intended to halt.

For your information, I personally conducted a series of hearings on the activities of Legal Services Corporation, and I was astounded by the range of abuses.

I would like to quote a man who is often quoted in his field. He is a Ph.D. out of Stanford University who complains about the very things that you are complaining about today. He points out with accuracy that "If one-third of the money nominally appropriated to help the poor were to reach the poor, we would have no one left in poverty." Obviously we have those left in poverty, and two-thirds of that money is being used for administrative expenses which are legitimate, but much is being used for illegitimate purposes. For example, in the Legal Services Corporation, we found so much money diverted from their explicit mandate, namely to provide legal services to those who could not otherwise afford it, that there was a relationship in dollars between what they had spent on other things and how many people they could not serve who were asking to be served. Now that is not only hypocrisy but is a kind of racketeering.

I would like to point out one other thing which is being ignored by those who are supporters of public subsidy of private political ideals in that they perceive that the poor, the unemployed require lobbying on their behalf because the rich, the haves will not cater sufficiently to their needs. That is a valid idea, that is theoretical at best. I believe the Government in representing various segments of society will take care of the problem at the State, local, and Federal level through the election process.

Mr. Dingman, numerous statutes, Federal regulations and legal opinions already restrict lobbying with federally appropriated funds. However, from the extensive list of abuses already cited in your written testimony, it is apparent that these statutes have rarely been enforced and through desuetude have lost considerable force on the conduct of recipients of Federal grants and contracts.

In your view, how would S. 1405 effectuate the enforcement of the current prohibition on Government subsidy or partisan advocacy? I am particularly interested in what we could do about the accountability which, as you point out, is virtually impossible.

Mr. **Dingman**. Well, Senator, the problem of enforcement is, of course, a major problem, and any time that these examples are raised, typically the other side will say, well, it is an isolated case or it is a matter that we have already dealt with by a new change in legislation or there is no pattern, we cannot prove it, and therefore on those rare occasions when you do have fairly good documentation and you think, well, finally one of these is going to be brought to trial, then you find that the matter is of such comparative insignificance with the platter of items to be prosecuted at the Department of Justice that nothing is done. And I did allude to one particular example that I am aware of with the Food Research Action Council where I know the prosecution was recommended and, yet, the Department of Justice in its own wisdom decided that they were not going to pursue it.

Now, it is easy to say, well, it is a small amount of dollars. Therefore we do not want to spend the resources on it. But as I said in my testimony, the estimates of how much money goes to private, nonprofit organizations ranges anywhere from $40 to $100 billion. I am not suggesting that even a great percentage of that is misused.

But suppose that the figure is $40 billion and suppose that even 1 percent is misused, that amount of money alone exceeds the amount of money spent on all your House races put together. That is a tremendous potential amount of money to be used in the lobbying arena, and typically they are lobbying to promote their own programs, to get more money for their own programs and, therefore, it becomes a catch 22 because you have all these people out there using Federal funds to lobby for more Federal funds so they could perpetuate their programs. So I would think that because enforcement provisions have historically proven ineffective, that some new approach has to be addressed and the approach being proposed in S. 1405 seems to be a valid, bold new approach, and that is instead of saying once we give you the money, we will watch you closely to see how you spend it; rather we will say you tell us up front whether your organization is going to engage in certain prohibited activities or not, and if it is going to engage in these advocacy activities, then you are not eligible for Federal funds. That is not going to make it a pure system. It is not going to clean out all of the violators, but it will certainly put a great many people on notice that they face very stiff penalties if indeed they do engage in advocacy activities which would have to be spelled out in the law.

I know there is some contention over the vagueness of the terms, and if there are terms that are vague, then we would need to address those and make sure that they are clear. But there has to be a way to preempt the giving of funds to people that you know are engaged heavily in advocacy programs, rather than trying to audit them after the fact. The auditors have just told us it is not possible.

Senator **Denton**. How can we start from scratch like that when we have got appropriations ongoing. We have the so-called Weicker amendment which would delete the service appropriation and prevent us from doing certain corrective Federal things?

Mr. **Dingman**. Well, you cannot cure all the ills in the system at one time. We have to take them a little bit at a time.

Senator **Denton**. Well, I guess that is what we are trying to do here.

At present, there are a number of recipient organizations with a high degree of public acceptance, such as Red Cross, the Bronx Zoo, et cetera.

Is it your belief that these organizations should be excluded from using Federal funds to promote their private political agendas? If so, then why?

Mr. **Dingman**. Sir, I know that the Red Cross, the Bronx Zoo are the catchwords that have been used by some people involved in trying to refine OMB Circular A122 or in addressing this legislation and in saying you cannot do that, you cannot stop these people from lobbying because they are highly respectable organizations. And I am not questioning that. But the question has to be, is it right to use Federal dollars for lobbying or give Federal dollars to an organization whose operations have the funds so commingled that you cannot be sure whether they are using Federal dollars for lobbying? And my answer to that would be, sir, that, no, they should not be stopped from lobbying. However, they should have to set up a clear line of demarcation organizationally so that the segment, the affiliate that engages in lobbying, that the public has the opportunity to know where their funds come from, that they are not controlled by, in the clear sense of the word, the other affiliate organization, the parent organization. And I would submit to you, Senator, that you have to operate under similar guidelines. You have to be very careful as a Senator as do all of your colleagues in the House and the Senate, that you have a clear line of distinction between the operation of your congressional and senatorial offices and your campaign offices. You have to set up your separate campaign operation, you have to have separate accounting of your funds so that not only do you avoid the act of evil but you avoid the appearance of evil. And it is the same approach that I feel is appropriate for very legitimate people who ought to be able to lobby. I do not say that anyone should be cut off from lobbying, but they should not be allowed to lobby under either actually using Federal funds or the appearance of using Federal funds.

Senator **Denton**. Well, I understand the analogy and it seems fair to me. I would like to thank you for your testimony, Mr. Dingman, and you may expect to receive some questions in writing for which we hope to get responses within 30 days from the time you receive the questions.

Mr. **Dingman**. Thank you very much.

Senator **Denton**. Good morning. Our next witness is David H. Remes, Esq., of the Washington, DC, law firm of Covington & Burling.

If you care to make an opening statement, Mr. Remes, we are ready to receive it now.

STATEMENT OF DAVID H. REMES, ATTORNEY, COVINGTON & BURLING, WASHINGTON, DC, ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION

Mr. **Remes**. Thank you, Senator I will not read my prepared testimony, it being admitted in the record.

Senator **Denton**. Your prepared testimony will be included in the record, without objection.

Mr. **Remes**. Thank you, Senator.

I would like to open by saying that the ACLU is a 501(c)(4) organization, and it has a 501(c)(3) foundation through which it conducts its litigation and public education activities. It does not receive any Federal contracts or grants.

Just to enable us to make the best possible record, I would respectfully request the opportunity to comment in writing on some of the materials that we have not seen that have been made a part of the record of this hearing including the statement by Senator East, and the constitutional analysis and questions and answers prepared by outside counsel. We ourselves have had an opportunity to review the memorandum prepared by the Congressional Research Service analyzing the bill, and after hitting the high points of my testimony on this bill, I would like to respond to certain issues that have been raised in that memorandum because it is certain to play a part in the debate.

We appreciate the opportunity to comment on the issues raised by S. 1405.

First, I would like to address what we regard as a misconception about what the first amendment requires and what it does not require. The Supreme Court has already made it clear in several landmark decisions that nothing in the first amendment prohibits the Federal Government from subsidizing private political advocacy or political advocacy by private parties. The funding of Presidential election campaigns is a perfect example of funds made available from the Federal Treasury for private political advocacy, and I daresay that none of the speakers here, including Congressman Craig, object to the notion of the Federal Government providing tax dollars for political advocacy when Congress clearly authorizes those funds be provided for that purpose. I think that the main concern that underlies S. 1405 and the comments of the speakers that have appeared thus far is that Federal funds are being used for purposes not authorized by Congress.

In that circumstance, we see no constitutional objection to Congress taking appropriate measures to assure that Federal funds only be used for purposes that the Congress has authorized. We think that S. 1405 goes way too far in this respect, however, because it does not simply preclude Federal funds from being used to underwrite private political advocacy; it prevents Federal funds from being used to underwrite advocacy in the service of Federal contract and grant programs, and it also cuts off unreasonably, in our view, from Federal contracts and grants private organizations that engage in political advocacy using their own resources, not a circumstance where the allegation is that the political advocacy is being funded through the Federal Treasury.

We believe that this is an impermissible penalty on the exercise of first amendment rights.

One of the major cases that would be cited on the other side of the issue, I suppose, is *United Public Workers* v. *Mitchell,* 330 U.S. 75 (1946), which is the case in which the Supreme Court upheld some of the restrictions imposed on political activities by Federal employees under the Hatch Act. Now, I have read *United Public Workers* v. *Mitchell* in anticipation of this hearing, and the thing to note about that decision is that the restrictions involved there were restrictions on a Federal employee acting in a partisan capacity as the chairman of a State political committee acting as part of a campaign for public office. And the Court made it clear that other forms of expression by political, by Federal employees were not prohibited.

With the Senator's forbearance, I would quote from the relevant page in the opinion: "Expressions, public or private, on public affairs, personalities and matters of public interest, not an objective of party action, are unrestricted by law so long as the government employee does not direct his activities toward party success." 330 U.S. at 100. In other words, the restrictions that are placed on the activities of a Federal employee under the Hatch Act are considerably narrower than the restrictions that would be placed upon a tax exempt organization under S. 1405. A Federal employee can do anything but engage in political activity in the service of a political party or the candidate of a political party.

The first amendment expression that would be limited under S. 1405 would touch upon virtually anything that anybody could conceivably say about any topic of potentially topical interest that might conceivably have any influence on someone else. The bill would impose a penalty on the exercise of first amendment rights, such as the Supreme Court has never upheld, and would be most unlikely to uphold in this case. It would be a burden on the exercise of the first amendment expression that could not possibly be justified on the basis of any legitimate interest that the Federal Government has in seeing that its own funds are expended only for the purposes authorized by Congress.

The fact that a tax-exempt organization engages in political advocacy can have no bearing on its general fitness to perform Federal contracts and grants.

Therefore I think there is a certain fuzziness in the connection between means and ends under S. 1405, if what the Senator seeks to do is to prevent Federal funds from being spent by tax-exempt organizations to engage in private political advocacy. The bill can certainly be written in a way that would accomplish that goal without penalizing tax-exempt organizations for engaging in political advocacy using their own funds.

Moreover, if the bill were to be so recast, it would seem essential to extend the limitations to nonexempt profit making organizations. It seems entirely irrational that, if the goal of this legislation is to prevent Federal funds being used to underwrite private political advocacy, the restrictions apply only to tax-exempt organizations. I daresay that many corporations which receive Federal contracts and grants engage in lobbying on a scale that dwarfs dozens of nonprofit organizations put together.

In this respect, although this is somewhat of a digression, I would say that if the genuine concern is the manipulation of Congress by the private sector or the manipulation of the private sector by the Congress, there are certainly very fertile areas that can be plowed here concerning the influence of PAC contributions and the misuse of the franking privilege by Congress, to name two.

Turning to the Congressional Research Service memorandum that was prepared in response to a request by Ellen Broadman of Senator Metzenbaum's staff, I would quickly make these points.

It is a long leap, we would submit, from the proposition that Congress need not subsidize private political activity to the proposition that Congress may penalize private political activity by withholding contracts and grants from groups or individuals that engage in such activities using their own resources. The Supreme Court's cases make clear that such penalties abridge first amendment rights and can be justified only by compelling governmental interests that can be achieved in no less restrictive way.

Here, if the governmental interest is in preventing funds of the Federal Government from being used to subsidize private political advocacy, legislation could be drafted which says that Federal funds shall not be used for this purpose. Senator Durenberger has introduced a legislation to this effect. And although we have certain quarrels with the vagueness of the definition of political advocacy in Senator Durenberger's it is a much more narrowly tailored bill that would address the evil that promotes this legislation.

In connection with the vagueness of the bill, that vagueness cuts in different directions at the same time. Mr. Dingman suggests obliquely, I think, that the expense and trouble to the government that would be involved in monitoring and investigating tax-exempt organizations if such groups could engage in political advocacy using their own funds while also performing Federal contracts or grants using Federal funds really outweighs the burden on such groups that would be imposed simply by cutting them off altogether from receiving Federal funds. The justification for a total cutoff, I take it, is that it is simply too much of a burden to investigate such groups and make sure they are complying. The problem with this objection is that once a tax-exempt organization has received a Federal contract or grant, it would have to be subject under S. 1405 to the same kind of open-ended monitoring and investigation, that Mr. Dingman thinks is such trouble, and the administrative burden would not be lightened at all.

We think that there are independent constitutional problems with the degree of intrusion that the disclosure required by S. 1405 would entail. But I certainly do not think that administrative convenience is a justification that could be advanced in support of the total cutoff of funding.

I think that that fairly wraps it up.

[The following material was submitted for the record:]

PREPARED STATEMENT OF DAVID H. REMES

Mr. Chairman and Members of the Subcommittee, good morning. My name is David Remes and I am an associate at Covington & Burling in Washington, D.C. I am appearing today on behalf of the American Civil Liberties Union to comment on issues raised by S. 1405, Senator Denton's proposed "Federal Neutrality Act." The ACLU has submitted extensive comments at the agency level on proposed regulations raising similar issues -- specifically, in connection with OMB's proposed revisions of Circular A-122 -- and the ACLU has testified several times in the past year at hearings on those proposed regulations and related legislation. The ACLU is a nationwide, non-partisan organization of more than 250,000 members devoted to the protection of individual rights and liberties; it receives no funds from federal contracts or grants.

The ACLU commends Senator East for calling this hearing to air the issues raised by S. 1405. In our view, S. 1405 is irredeemably flawed: It would impose discriminatory and wholly unjustifiable burdens on the First Amendment rights of tax-exempt organizations, and would at the same time cripple a wide variety of federal contract and grant programs for no good reason. After summarizing the provisions of the bill, I will discuss our objections more fully.

In broad outline, S. 1405 provides that any tax-exempt organization that engages in "political advocacy" is barred from receiving federal funds for any purpose -- even if the organization's "political advocacy" is financed entirely with funds from private sources, and even if the activities that constitute "political advocacy" would effectuate federal contract or grant purposes. Sec. 3(a). The bill also forbids the disbursement of federal funds to any tax-exempt organization affiliated with any organization that engages in "political advocacy," whether or not that organization is itself tax-exempt. Id.[1] S. 1405 further provides that no funds received from the United States may be used for "political advocacy" -- a prohibition limited to the use of federal funds received by a tax-exempt organization. Sec. 3(b)(2).[2]

To facilitate enforcement of the bill's restrictions, S. 1405 would provide for open-ended and continuing government investigation and monitoring of tax-exempt organizations that receive federal funds; and the bill would establish criminal penalties and other severe sanctions for violation of its provisions. Under Section 6, an intentional violation of the bill's provisions would be a felony punishable by a fine up to $10,000 per offense and/or a prison term up to two years per offense; and a negligent violation of S. 1405's provisions would subject the offending individual "to discharge and forfeiture of office or such other penalty as the court shall prescribe." Federal officials, no less than officers and agents of tax-exempt organizations, would be subject to S. 1405's sanctions. The bill also authorizes private citizens to commence civil actions for violations of its restrictions, and, if successful, a prevailing plaintiff would be entitled to recover a minimum of $10,000 as well as attorney fees. Other drastic relief is also authorized.

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[1] Under the bill, one organization is "affiliated" with another if the two share any common directors, officers, or executive staff members who could, in concert, "cause or prevent action on matters of political advocacy by either organization." Sec. 3(b)(9).

[2] But for this seemingly arbitrary limitation, S. 1405's prohibition on the use of federal funds for "political advocacy" would apply to non-exempt, profit-making organizations and state and local governments, and to those who receive their paychecks from Uncle Sam as well as those who receive assistance under any of the various federal benefits programs. Applied across the board, the prohibition would also appear to repeal the system of public financing of presidential primary and general election campaigns under the Presidential Election Campaign Fund Act. S. 1405, however, is concerned only with the use of federal funds for "political advocacy" by tax-exempt organizations.

Although its restrictions are undeniably sweeping, S. 1405's goals are not entirely clear. Plainly enough, it seeks to prohibit the use of federal funds for activities that constitute "political advocacy," but why tax-exempt organizations are disqualified from receiving federal contracts or grants if they engage in "political advocacy" using their own resources is a mystery. Nor is any explanation offered for disqualifying only tax-exempt organizations that use their own resources to engage in "political advocacy," and not non-exempt, profit-making organizations, or state and local governments. It is also unclear why federal contract or grant funds should not be used for activities that constitute "political advocacy," if such activities would effectuate the purposes of a federal contract or grant.

Notwithstanding its profession of "neutrality," therefore, S. 1405 appears to be a broad-gauged attack on basic First Amendment rights of tax-exempt organizations. Whatever may be the explanation for this zero-based approach to the rights of tax-exempt organizations, S. 1405 is irreconcilably at odds with the First Amendment for at least five reasons.

First, S. 1405 proceeds from an erroneous premise -- that the First Amendment forbids the expenditure of public funds to underwrite political activity by private parties. This is the thrust of the "findings" set forth in Section 2 of the bill. Of course, to the extent that S. 1405 aims to bar the use of federal funds for "political advocacy" in the performance of federal contracts or grants, the bill's concerns are misplaced, for the contractor or grantee is simply giving effect to the purposes of Congress in establishing the contract or grant program, and private "political advocacy" as such is not involved. Moreover, to the extent that S. 1405, in supposed deference to the First Amendment, limits the use of federal funds for private "political advocacy" only by tax-exempt organizations, the bill is hopelessly under-inclusive and the genuineness of its professed purpose is therefore deeply suspect. See First National Bank v. Bellotti, 435 U.S. 765, 793 (1978); Smith v. Daily Mail Publishing Co., 443 U.S. 97, 104-05 (1979); id. at 110 & n.3 (Rehnquist, J., concurring).

To the extent that S. 1405 does seek to bar the use of federal funds to underwrite private "political advocacy," however, the bill's premise that the use of such funds for such a purpose offends the First Amendment is mistaken. As the Supreme Court stated in upholding public financing of presidential election campaigns, such expenditures, if made on an even-handed basis, "facilitate and enlarge public discussion and participation in the [political] process," and therefore further, not abridge, pertinent First Amendment values. Buckley v. Valeo, 424 U.S. 1, 92-93 (1976) (per curiam). The Supreme Court implicitly reaffirmed this basic truth last year when it upheld the special tax subsidy afforded certain veterans organizations, which are permitted to lobby as much as they want in furtherance of their exempt purposes and yet remain exempt under I.R.C. § 501(c)(19). Regan v. Taxation With Representation, 103 S. Ct. 1997, 2001-04 (1983). It is too late in the day to argue that either direct public subsidies for private "political advocacy" such as those upheld in Buckley, or indirect subsidies such as those upheld in Regan, offend the First Amendment.

The solution to the particular evils identified in Section 2 of S. 1405 -- which are essentially evils of discrimination in the expenditure of public funds -- is, if such discrimination is real, to assure that expenditures are made on an even-handed basis, not to eliminate such expenditures altogether. Thus, if it is determined, as Section 2(3) appears to suggest, that federal funds are being made available to underwrite private "political advocacy" on a basis that invidiously discriminates against speakers by reason of the views they espouse, surely the answer is to eliminate the invidious discrimination and not the funding. And it must be stressed that invidious discrimination is shown not when Congress "subsidizes some speech, but not all speech," Regan, 103 S. Ct. at 2002, but when the aim or effect of the selective funding is to suppress viewpoints on the basis of their content. Id. There is no evidence of any such aim or effect in the expenditure of federal funds to underwrite private "political advocacy," much less in expenditures to finance federal contract and grant programs.

Second, S. 1405 impermissibly conditions a tax-exempt organization's access to federal contracts and grants on its willingness to forego the exercise of basic First Amendment rights using its own resources. Nothing in the Constitution requires the federal government to underwrite private political activity, and Congress is certainly entitled to assure that public funds not be used for that purpose, as long as the restrictions that Congress imposes are otherwise constitutional. But the Supreme Court has repeatedly held that "even though a person has no 'right' to a valuable government benefit for any number of reasons," the government "may not deny a benefit to a person on a basis that infringes his constitutionally protected interests -- especially his interest in freedom of speech." Perry v. Sindermann, 408 U.S. 589, 597 (1972).[1]

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[1] See, e.g., Connick v. Meyers, 103 S. Ct. 1684, 1687-88 (1983); Thomas v. Review Board, 450 U.S. 707, 716 (1981); Branti v. Finkel, 445 U.S. 507, 515-16 (1980); McDaniel v. Paty, 435 U.S. 618, 625 (1978); Pickering v. Board of Education, 391 U.s. 563, 568 (1968); Keyishian v. Board or Regents, 385 U.S. 589, 605-06 (1967); Sherbert v. Verner, 374 U.S. 398, 404 (1963); Wieman v. Updegraff, 344 U.S. 183, 192 (1952); Hanegin v. Esquire, Inc., 327 U.S. 146, 156 (1946). Cf. Speiser v. Randall, 357 U.S. 513, 528-29 (1958).

Under S. 1405, a tax-exempt organization would be denied federal contracts and grants solely because it engaged in "political advocacy" using its own resources, even though the fact that it has engaged in "political advocacy" using its own resources could have no bearing on its general fitness to perform federal contracts or grants.[1] To condition a tax-exempt organization's access to contracts or grants on its willingness to forego the activities that constitute "political advocacy" therefore imposes an unjustifiable burden on the exercise of First Amendment rights -- a restriction even more severe than those that currently apply to federal employees, and one not applicable to non-exempt, profit-making organizations.[2]

Third, S. 1405 also fails from a First Amendment and Due Process standpoint because its definition of "political advocacy" is unacceptably vague, failing to afford fair notice of what conduct falls within its terms and vesting in government officials discretionary power to decide, on the basis of their own subjective preferences, what expression falls outside the forbidden zone. As defined in Section 3(b) of the bill, "political advocacy" could embrace literally anything that anyone might say or do on a matter of potentially topical interest: The definition is not limited to express advocacy of the adoption or rejection proposed legislation, the election

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[1] Needless to say, the First Amendment constrains the government's power to limit expression by groups as well as individuals. See, e.g., Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290 (1981); First National Bank of Boston v. Bellotti, 435 U.S. 765, 791 n.31 (1978); California Motor Transportation Co. v. Trucking Unlimited, 404 U.S. 508, 510-11 (1972). Moreover, there is no "difference of constitutional magnitude between the threat of job loss to an employee of the State [for exercising First Amendment rights], and a threat of a loss of contracts to a contractor." Lefkowitz v. Turley, 414 U.S. 70, 83 (1973).

[2] Because there is no basis for the disparate treatment of tax-exempt and non-exempt organizations, S. 1405's disqualification provision violates not only the First Amendment but the Fifth Amendment's equal protection guarantee as well.

or defeat of a candidate for public office, or a particular judicial or administrative disposition of a particular legal claim. Instead, S. 1405's definition of "political advocacy" extends to any "attempt" to influence "governmental decisions" either directly, through communications with government officials, or indirectly, through communications with the general public, "or any segment thereof." (The bill defines "governmental decisions" as virtually any legislative, administrative, or judicial action.)[1]

But what constitutes an "attempt" to influence "governmental decisions"? Such activity could embrace virtually any form of First Amendment expression -- depending entirely on how government officials may wish to view the facts of a particular case. For this reason, when OMB last year sought to disallow the use of federal contract and grant funds for "political advocacy," the House Committee on Government Operations specifically condemned the term as "impermissibly vague." As the House committee explained, the term "was defined as any attempt to influence public opinion, and yet what constitutes 'attempt' and 'influence' was not defined."[2] Therefore, even assuming that Congress could condition a tax-exempt organization's access to federal contracts or grants on its willingness to forego "political advocacy," Congress would have to offer a much clearer definition of that term than S. 1405 provides.

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[1] See Sec. 3(b)(10). The bill also includes in its definition of "political advocacy" expression that would influence private conduct only -- "boycotts, picketing, strikes, or demonstrations," Sec. 3(b)(3)(G) -- regardless of whether the aim or effect of such expression is to influence "governmental decisions."

[2] Administration Proposal Threatens First Amendment Rights of Government Grantees and Contractors: First Report by the House Committee on Government Operations, H.R. Rep. No. 92, 98th Cong., 1st Sess. 12 n.1 (1983).

If S. 1405's definition of "political advocacy" is intended to mean that any communication with the public or with government officials shall be regarded as an attempt to influence "governmental decisions," then the definition is plainly overbroad, for many communications with the public or with government officials could be for other purposes entirely. The list of exceptions to the definition of "political advocacy" provided in Section 3(b)(4) of the bill does not begin to exhaust the possibilities. What is needed is not a list of activities that do *not* constitute attempts to influence "governmental decisions," but rather a clearer definition of what communications *do* constitute attempts to influence such decisions.

Only by providing such a clear definition can Congress avoid what the Supreme Court has called "the shoals of unconstitutional vagueness." *Buckley*, *supra*, 424 U.S. at 78. The Court in *Buckley* held that language in the Federal Election Campaign Act similar to the language in Senator Denton's bill (if anything, FECA's language was more restrictive) had to be construed to refer only to *express* advocacy if it were to satisfy the First Amendment. Thus, S. 1405's restrictions could legitimately apply only to *explicit* calls for the adoption or rejection of proposed legislation, the election or defeat of a candidate for public office, etc. Assuming that S. 1405's restrictions were constitutional in other respects, the bill would nevertheless fail from a First Amendment standpoint unless it met this requirement, for a tax-exempt organization would otherwise be unable to tell what activities would render it ineligible for contracts or grants -- or liable to penalties for violation of S. 1405's provisions.

Fourth, S. 1405 impermissibly conditions a tax-exempt organization's access to federal contracts or grants on the organization's willingness to submit to open-ended investigation and monitoring by government officials, who would be vested with sole discretion to determine what "information . . . [would] be relevant toward effectuation of the purposes of [the] Act." Sec. 4(8). Submission to such unrestricted investigation and monitoring is presumably demanded to allow government officials to satisfy themselves that tax-exempt organizations receiving federal contracts or grants are not engaging in "political advocacy," with or without federal funds. But the extraordinary disclosure requirements spelled out in Sections 4 and 5 of S. 1405 are unjustifiably intrusive.

Because of the well-recognized danger that compelled disclosure of the type contemplated here could "seriously infringe on privacy of association and belief guaranteed by the First Amendment," Buckley, supra, 424 U.S. at 64,[1] recipient organizations should, as a general matter, be permitted to certify that they are not engaging in "political advocacy," and government officials should be authorized to undertake audits and other inquiries only on a spot-check basis or where genuine cause exists to believe that a violation of S. 1405 has occurred. And the scope of such audits and inquiries should be strictly limited to guarantee that they not unnecessarily encroach on the exercise of First Amendment rights. To subject tax-exempt organizations to the degree of disclosure contemplated by S. 1405 as a condition of access to federal contracts or grants would violate the First Amendment.

Fifth, and finally, S. 1405 must fail because, as suggested above, its very purpose is suspect: It appears designed primarily to punish or restrict political expression by tax-exempt organizations -- an impermissible goal under the First Amendment. As noted above, "Congress is not required to subsidize lobbying," Regan, supra, 103 S. Ct. at 2001, and the Supreme Court has rejected "the 'notion that First Amendment rights are somehow not fully realized unless they are subsidized by the State.'" Id., quoting Cammarano v. United States, 358 U.S. 498, 515 (1959) (Douglas, J., concurring). Thus, a decision by Congress not to pay for the political activities of its contractors and grantees -- the only legitimate purpose that S. 1405 could be said to serve, however incompletely it would do so -- by itself raises no First Amendment concerns. But the government's discretion in this area is not entirely free from constitutional constraints.

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[1] See, e.g., Shelton v. Tucker, 364 U.S. 479, 488-90 (1960); Talley v. California, 362 U.S. 60, 63-65 (1960); Bates v. City of Little Rock, 361 U.S. 516, 522-27 (1960); Louisiana ex rel. Gremillion v. NAACP, 366 U.S. 293, 296-97 (1961); NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 458-59 (1958).

One of those constraints is the requirement that any limitation on First Amendment activity be closely tailored to achieve a compelling government interest that can be served in no less restrictive way. Even assuming that the government's interest in precluding the use of federal funds by private parties for "political advocacy" could be considered "compelling," S. 1405 plainly fails that test, for this objective could be achieved without disqualifying from federal contract and grant programs tax-exempt organizations that engage in "political advocacy" using their own resources, and the objective could be achieved without the intrusive degree of disclosure required by S. 1405. In short, the burdens S. 1405 places on protected expression are entirely gratuitous.

Moreover, if precluding the use of federal funds for "political advocacy" by private parties were truly S. 1405's objective, it is difficult to understand why the bill's restrictions apply only to tax-exempt organizations, and not to all federal contractors and grantees. The objective itself must be considered suspect, in any case, for it singles out expression for restriction on the basis of its content, not on the basis of some evil unrelated to its content. It is not as though S. 1405 merely precludes the use of federal funds for purposes unrelated to the performance of a federal contract or grant; even "political advocacy" that would effectuate federal contract or grant purposes is proscribed. S. 1405 would bar such activity solely by reason of its expressive content -- a highly questionable restraint from a First Amendment standpoint, even when the government's power to control the use of its own funds is involved.

The fact that S. 1405's burdens on protected expression are neither closely tailored to achieve a compelling government interest, nor the least restrictive means of achieving any such interest -- and the fact that S. 1405 takes aim at a particular type of expression by a narrow class of speakers -- unavoidably gives rise to suspicions of impermissible motive. In the end, S. 1405 appears designed to squelch First Amendment expression by tax-exempt organizations, using as a weapon the threat of denial of federal contracts and grants. The First Amendment forbids any such design. Unless S. 1405 were fundamentally recast to apply even-handedly to all federal contractors and grantees, and to impose no more burdensome restrictions than necessary to serve legitimate government purposes, S. 1405 could not survive scrutiny under the First Amendment.

Thank you.

Senator **Denton**. Thank you, Mr. Remes.

Mr. **Remes**. Senator?

Senator **Denton**. Yes.

Mr. **Remes**. With your indulgence, may I clarify one remark?

Senator **Denton**. Surely.

Mr. **Remes**. This is an issue that I do not think should escape unanswered. It is an issue that is raised by Mr. Durbin's Congressional Research Service memorandum. There is a passage in his memorandum in which he seems to conclude from the fact that the Congress can impose some conditions on grants of Federal funds that Congress' power is conditioned to disbursement of Federal funds is essentially limited. And I would only say that this conception has no support in Supreme Court precedent. In fact, in the Supreme Court's opinion in *Harris* v. *McCray*, 448 U.S. 297 (1980), which presents issues that are similar in many respects here, the Court indicated the opposite. *Harris* v. *McCray* was a case in which the Supreme Court upheld the cutoff of medicaid financing for abortions and the Court went through an analysis in which it said that the Government is not constitutionally required to subsidize abortions. The Court then went on to say in footnote 19 at page 317 that "[a] substantial constitutional question would arise if Congress had attempted to withhold all medicaid benefits from an otherwise eligible candidate simply because that candidate had exercised her constitutionally protected freedom to terminate her pregnancy by abortion." That would be a forbidden penalty.

Now, whatever one may think about whether such a constitutional right should exist, it is important to recognize the distinction that the Court was drawing. Congress need not subsidize abortion but Congress cannot deny medicaid benefits from a woman who is otherwise eligible for medicaid benefits simply because she exercises a choice the Constitution entitles her to exercise.

In this situation, the analogy is the Federal Government is under no obligation to subsidize political advocacy by private tax-exempt organizations, but the Government cannot deny benefits to otherwise tax-exempt organizations because those organizations exercise their constitutional rights. There is a distinction that Justice Blackmun picked up in his concurrence in *Taxation Against Representation* v. *Reagan,* and I think it is one that Congress must be mindful of.

Senator **Denton**. In your testimony you stated that the thrust of S. 1405 goes too far, and you referred to a document which I shall read from.

Would you disagree with the conclusion by the Congressional Research Service, the Library of Congress, as appearing in their analysis of S. 1405 as follows:

> Consequently, it would seem that Congress, under its broad powers to spend, would have the authority under the Constitution to enact a legislation that would condition the receipt of government funds to certain organizations on their refraining from certain "political advocacy" since it has been well settled that Congress has the power to impose conditions on the receipt of Federal funds.

It seems to me the thrust of the last witness' testimony.

Mr. **Remes**. Senator, it is that contention that I have undertaken to address in my earlier remarks, arguing that simply because Congress may impose some conditions on the disbursement of Federal funds does not mean that it may impose any conditions that it wishes.

I must say, incidentally that the Congressional Research Service memorandum offers a little bit of something for everyone. In one connection, it seems to say, page 9, that the Congress can do anything it wants and, in another section, it says, at page 14:

> It is arguable that for Congress to prevent the use of Federal funds for political advocacy by prohibiting organizations from expending public funds, private funds, or both for such advocacy is to prohibit both protected and unprotected activity.

Mr. Durbin adds: "A less sweeping prohibition for the expenditure of Federal funds for political advocacy purposes [than that set forth in S. 1405] would probably be less constitutionally suspect."

In other words, I think that this memo takes back with one hand what it gives with the other. Its analysis is self-contradictory and inconclusive to the extent that it takes a stand or disagrees with the stand that we have suggested here. To the extent that the analysis in the CRS memo is at odds with ours, I believe that the memorandum's error is its premise that Congress can do anything it wants, without regard to the first amendment.

Senator DENTON. I would not maintain that they could do anything they want in violation of the first amendment, but I would refer to the authority as a source and did, and I see no tendency in that to indicate that the Congress can do anything it wants. I think it was relatively explicit about what it was referring to that the Government could do, and with respect to the rationale on which that justification was based. But I am respectful of your argument.

Did I understand your testimony to indicate that you have no problem with a motivation to prohibit the use of Government funding, that is funding taxpayer money for political advocacy per se? Would you go along with that?

Mr. REMES. We do not believe that that motivation itself raises any first amendment problems.

Senator DENTON. OK.

Then it seems to come down again to whether or not there is sufficient accountability right now in an organization which receives both taxpayer money through Government funding and private funds, and it has been my observation that there is a great temptation and a propensity to yield to the temptation to commingle funds or resources or office equipment or activities in, as the man referred to earlier, a scandalous way. And we are trying to correct that.

Mr. REMES. Senator, if I may say so, Mr. Dingman suggested an alternative which would allow an organization to split, amoeba-like, in two, and I would simply point out that that alternative, which was the alternative that was originally proposed by OMB in its January 1983 proposed revision of circular A-122, would be prohibited under S.1405 because the very fact of affiliation between two exempt organizations would render both of them ineligible for Federal contracts or grants if one of them engages in political advocacy.

This is not even a question of preventing the commingling of funds between the organizations. It is a question of denying Federal contracts and grants to both.

Senator DENTON. But you would maintain in general that 501(c)(3) organizations could accept those Federal and private funds, and will use only the private funds for political advocacy?

Mr. REMES. We maintain that that restriction is already under Federal law, and to the extent that Federal law only authorizes Federal funds to be spent for the purposes for which the funds are authorized to be disbursed, there are already expensive monitoring and audit programs to make sure that such funds are so used. To the extent that there is special concern with political advocacy, that concern may come from an existing vagueness in the definition of political advocacy that makes it very hard to enforce those provisions in some cases, in which case the answer would be to clarify the definition.

Senator DENTON. There appears to be an inconsistency between the statement in your April 2 testimony before the Subcommittee on Intergovernmental Relations and a statement—and an excerpt from your statement today, which I would ask you to reconcile.

You said on page 2 of your April 2d testimony, "The Constitution, we believe, guarantees no one a general right to lobby the Government at the taxpayers' expense. And the government is entitled to assure that Federal funds not be used for that purpose as long as the government's restrictions are even-handed and clear and do not burden protected expression."

Today you have stated as follows, "First, S. 1405 proceeds from an erroneous premise that the first amendment forbids the expenditure of public funds to underwrite political activity by private parties."

Is there any contradiction there or——

Mr. REMES. If there is an apparent contradiction, Senator, I certainly intended none.

My first statement is to the effect that the first amendment does not require Congress to subsidize political advocacy and also that the first amendment imposes no bar to the Government's making sure that its own funds are not spent for those purposes.

Senator DENTON. You said the first amendment, you call it erroneous that the first amendment forbids the expenditure of public funds to underwrite——

Mr. REMES. Yes. The fact that the first amendment does not require the Government to subsidize private political advocacy does not mean that the first amendment prohibits the Government from financing private and political advocacy. That is the difference I wish to make clear.

Senator DENTON. Well, thank you. You may receive written questions for which we hope to get written answers within 30 days.

Mr. REMES. Thank you, Senator.

Senator DENTON. This hearing stands adjourned.

[Whereupon, at 12:05 p.m., the subcommittee adjourned, subject to the call of the Chair.]

THE FEDERAL NEUTRALITY ACT

WEDNESDAY, MAY 23, 1984

U.S. Senate,
Subcommittee on Separation of Powers,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to call, at 10:38 a.m., in room SD-226 of the Dirksen Senate Office Building, Hon. Jeremiah Denton (member of the subcommittee) presiding.

Staff present: Steven R. Valentine, chief counsel and staff director, and Bradford W. Stone, professional staff member, Subcommittee on Separation of Powers; also Richard D. Holcomb, general counsel, and Frances R. Wermuth, chief clerk, Subcommittee on Security and Terrorism.

OPENING STATEMENT OF SENATOR JEREMIAH DENTON

Senator Denton. Good morning, the hearing will come to order.

The subcommittee is meeting today to receive additional testimony on S. 1405, the Federal Neutrality Act. The witnesses include our distinguished colleague from Idaho, the Honorable Steven D. Symms, who we hope will arrive momentarily—there he is, speak of the devil, our distinguished colleague from Idaho.

Senator Symms. Sorry I'm late, Mr. Chairman.

Senator Denton. That's OK—we had just mentioned your name when you walked through the door.

Senator Symms is a key cosponsor of S. 1405. Our other witnesses include Dr. James McClellan, director of the Center for Judicial Studies, Washington, DC, a very distinguished authority in the field of constitutional law; Dr. Charles Rice, professor of law, University of Notre Dame, South Bend, IN, and Rev. Charles V. Bergstrom, executive director of the Office of Governmental Affairs, Lutheran Council in the U.S.A.

Before I call on Senator Symms to testify, I would like to summarize the overall policy issue under consideration today.

As was noted at the last hearing on S. 1405, it has been the policy of our country that the employees and resources of the Government should not be used to promote private political viewpoints. The policy has been reflected in legislation that amended the Federal Criminal Code to impose penalties on Federal employees who engage in lobbying, in legislation that extended the provisions of the Hatch Act to officers and employees of State and local agencies "whose principal employment is in connection with any activity which is financed in whole or in part by loans or grants by the United States * * *," and most recently in the issuance by the

Office of Management and Budget of the final revisions to OMB Circular A-122 concerning the treatment of lobbying costs by most nonprofit organizations receiving Federal grants and contracts.

I plan to ask today's witnesses to comment on the effectiveness of the OMB circular, the latest proposal to eliminate taxpayer financing of private political advocacy.

Despite the established policy against taxpayer subsidy of partisan advocacy, abuses do continue and the burden upon the taxpayers is being increased. In addition to the abuses cited at our last hearing, I want to cite some additional examples of how our tax dollars are being misused.

New Ways Ministries of Mount Rainier, MD, received a grant of $18,416 from the Department of Health and Human Services to study "the coming out process and coping strategies of gay women."

In 1979-80, HHS gave $167,724 to the California State University at San Francisco's Center for Homosexual Education, Evaluation and Research to study civil liberties and sexual orientation.

The national organization of Planned Parenthood, which advocates abortion on demand and abortion referrals for teenagers without notice to the parents, has received $12.8 million in tax dollars, over half of its total budget. Planned Parenthood's affiliates operate 36 abortion clinics and have performed over 75,000 abortions.

Additionally, Planned Parenthood has used taxpayer funds to advocate sex education in public schools based on the Swedish model, preaching value-free reproductive freedom. In my view, it is not value-free; there are values there, but they are destructive.

A pamphlet entitled "The Great Orgasm Robbery," published by the Rocky Mountain Planned Parenthood in 1977, contains this guidance to our children and others:

> Sex is fun and joyful * * * and it comes in all types and styles, all of which are OK. Do what gives pleasure and enjoy what gives pleasure. Don't rob yourself of joy by focusing on old-fashioned ideas.

VISTA gave $792,156 to the Youth project, a self-described tax-exempt foundation which supports a wide range of grassroots social change efforts. The Youth project gave cash and technical support to the Nevada Uranium Project which opposes nuclear power and the basing of the MX missile in Nevada. It gave funds to the radical American Indian Movement's Freedom for Survival Group, and to the California Indian Land Acquisition project, which seeks to reclaim large portions of California for Indian ownership. The latter group, using taxpayer funds, has sued to place land in San Diego and Yosemite National Park under Indian control.

In 1981, the Department of Education gave PUSH, headed by Rev. Jesse Jackson, $656,644. President Reagan's then Assistant Education Secretary, Vincent Reed, called PUSH's accounting system unstable and "not adequate to safeguard assets." Two studies by the Department have severely criticized PUSH's handling of Federal funds. One study said "This does not add up to a program." While receiving Federal funds, Mr. Jackson has engaged in partisan political activity. He was a major participant in the Anti-

Reagan Solidarity Day and is lobbying for more food stamps, more welfare, and less defense spending.

The antidefense lobby is substantially supported with taxpayer funds. The American Friends Service Committee, which urges policies that are tantamount to unilateral American disarmament, received a total of $596,092 in Federal funding during 1980. The National Council of Churches received $435,775 from the Department of Labor in 1980. The U.S. Student Association, which has strong Marxist overtones, received $107,630 from the Department of Education.

The Legal Services Corporation is a semiautonomous entity that dispenses hundreds of millions of tax dollars every year. I am not saying I am opposed to Legal Services Corporation; I am opposed to the abuses that we are about to go into. Its activities have included many examples of the misuse of tax dollars. Ostensibly created to help poor people with routine legal matters, the Corporation has allowed its attorneys to promote a variety of fashionably liberal causes. Some of them are so liberal that I would say they are not even fashionable, including some that are specifically proscribed by law. Abortions, forced housing, quotas, gay rights, and rent strikes are areas in which Legal Services lawyers have involved themselves at taxpayers' expense.

In California, they litigated to compel payment of supplemental security income benefits to alcoholics. A suit challenging high school competency testing was filed in Florida by Legal Services. Lobbying for a graduated State income tax was one of the projects undertaken by a Massachusetts Legal Services Institute. According to a spokesman for the American Farm Bureau Federation, Legal Services lawyers have helped to reorganize farm workers unions in California, Florida, and New Jersey.

The Governor of Pennsylvania has blamed Community Legal Services of Philadelphia for helping to cause violence at Graterford Prison in October and November 1981. Thirty persons were held hostage by a three-time killer who was returned to the general prison system as a result of a 1975 Legal Services suit. Gov. Richard Thornburgh has said:

> Never again should government permit "cause" groups * * * to place the purported rights of vicious criminals above the safety of law officers.

This was a typical case of Legal Services working against, not for, the public interest.

The Legal Services Corporation also gave funding to an organization called the Coalition for Sensible and Humane Solutions to conduct training programs, the purpose of which was described as educating and informing community activists about current Federal, State, and local budget-cutting activities, and sharing and developing strategies for fighting back. The Western Center for Law and Poverty used a $60,000 grant from the Federal Legal Services Corporation to hire political consultants to coordinate a campaign opposing a tax-cutting initiative in California. We could go on and on with examples of abuses by the Legal Services Corporation alone.

I believe that it is time to end such public funding of partisan advocacy. Why should taxpayers continue to underwrite lobbying for ideological causes or values of which they disapprove? As Thomas Jefferson observed, "To compel a man to furnish funds for the propagation of ideas he disbelieves and abhors is sinful and tyrannical." If private tax-exempt organizations want to advance their opinion, they have every right to do so, but they should solicit their funds from the private sector, from those who agree with their views. Those organizations have no right to use Government funds to subsidize their partisan advocacy.

I believe that the "Federal neutrality" approach, which is what this hearing is about, is the best way to eliminate taxpayer financing of private political advocacy.

I am going to call on Senator Symms, a man of great leadership in this and other fields, but, before doing so, I must take care of a housekeeping matter. At our last hearing, one of the witnesses made reference to an analysis prepared by Thomas M. Durbin of the Congressional Research Service of the Library of Congress, entitled "Constitutionality of Congressional Legislation That Would Prohibit Organizations Receiving Public Funding to Engage in Political Advocacy." A reference was also made to Prof. Marshall J. Breger's lecture entitled "Halting Taxpayer Subsidy of Partisan Advocacy."

If there is no objection, I will place those two items in the hearing record.

[The following material was submitted for the record:]

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

CONSTITUTIONALITY OF CONGRESSIONAL LEGISLATION THAT WOULD PROHIBIT ORGANIZATIONS RECEIVING PUBLIC FUNDING TO ENGAGE IN POLITICAL ADVOCACY

Thomas M. Durbin
Legislative Attorney
American Law Division
April 23, 1984

Executive Summary

The first part of this report is an introduction to the legislation under consideration which would essentially prohibit the receipt of government funds by certain organizations which would engage in political advocacy. The purpose of such legislation would be to condition the receipt of federal funds on a policy of neutrality so that federal funds could not be used to further the goals of special interest groups or groups engaged in political advocacy.

The second part analyzes section 501(c) of the Internal Revenue Code and the power of Congress to deny tax exempt status to organizations that engage in political activities. The decision of Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849 (10 Cir. 1972), cert. den. 414 U.S. 864 (1973) is analyzed which held that the revocation of the tax exempt status of a section 501 (c)(3) organization due to lobbying and political activities did not violate any First Amendment and Fifth Amendment rights of the organization. Also, the decision of Haswell v. United States, 500 F.2d 1133 (Ct. of Claims 1974), cert. den. 419 U.S. 1107 (1975) which denied a taxpayer a refund on payments to an association because the association's activities involved substantial political activities. And in the decision of Regan v. Taxation With Representation, __ U.S. __, 76 L. Ed. 2d 129 (1983), the Supreme Court held that Congress is not required by the First Amendment to subsidize lobbying and does not infringe on any First Amendment rights when it does not allow deductible contributions to certain organizations engaged in lobbying.

The third part analyzes the power of Congress to enact legislation that would put conditions on the receipt of public funds. The spending power of Congress is analyzed. And the report notes that the federal government has the constitutional power to fix the terms on which federal grants or funds are allotted to the states. Conditional grants-in-aid are an accepted and well established part of the congressional spending power.

The fourth part analyzes whether the proposed legislation would pose any First Amendment problems. The proposed legislation is analyzed under the First Amendment vagueness and overbreadth tests. And the report suggests that definition of "political advocacy" should be tightened and made more specific to avoid any vagueness and overbreadth problems.

I. Introduction

Legislation has been proposed in Congress that would essentially prohibit the receipt of government funds by certain orgianizations which would engage in political advocacy.[1] The prohibitions of such legislation are stated as follows:

> (1) No Government funds may be disbursed to any recipient organization which engages in political advocacy or which is an affiliate of any organization which engages in political advocacy;
>
> (2) No Government funds received from the United States or from one of its instrumentalities or agents, may be used for political advocacy;
>
> (3) Any recipient organization which uses Government funds to engage in political advocacy must reimburse the Federal Treasury the total amount of Government funds received for any program(s), grant(s) contracts or other source of Government funds from which the funds used for political advocacy were obtained.[2]

The purpose of such legislation is to condition the receipt of federal funds on a policy of neutrality so that federal funds could not be used to further the goals of special interests groups or of organizations that would be engaged in political advocacy.[3] The "recipient organizations" would be those that are exempt from taxation under section 501 (c) of the Internal Revenue Code.[4] And "government funds" are defined as"...all money and/or in-kind support, direct or indirect, provided to a recipient organization whether by grant, loan contract, cooperative agreement, or any other similar means, funded from or by the Treasury of the United States."[5] Moreover, such legislation would put the burden on recipient organizations to certify under penalty of perjury that they are not engaged in political advocacy. Recipient organizations, therefore, would be investigated by the government only when there is actual evidence of political advocacy or when an audit would reveal an act of political advocacy.[6]

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[1] See, for example, S. 1405, 98th Cong., 1st Sess. (1983).

[2] S. 1405, § 2, 98th Cong., 1st Sess. (1983). See the full text of S. 1405 in the Appendix A _infra_.

[3] 129 Cong. Rec. S 7736 (daily ed. June 6, 1983) (statement by Senator Denton). Many of the same issues have been raised in the context of proposed revisions to OMB Circular A-122. see Administration Proposal Threatens First Amendment Rights of Government Grantees and Contractors: Hearings Before a Subcomm. of the House Committee on Government Operations, 98th Cong., 1st Sess. (1983).

[4] S. 1405, § 3 (b)(1), 98th Cong., 1st Sess. (1983).

[5] _Id._, § 3 (b)(2).

[6] _Id._, § 6.

II. Section 501 (c) of The Internal Revenue Code And The Power of Congress To Deny Tax Exempt Status To Organizations Engaging In Political Activities

The "recipient organizations" under the proposed legislation would be entities covered under section 501(c) of the Internal Revenue Code and thus exempt from taxation. There are many types of corporations, organizations, clubs, associations, societies, committees and even trusts that are granted exemption from taxation under this section.[7] And under section 501 (c) (3) of the Internal Revenue Code, certain corporations and foundations which are organized and operated exclusively for religious, charitable, scientific, literary, educational and related purposes are exempt from taxation provided in or intervene in any political campaign on behalf of any candidate for public office.[8]

In a 1972 case involving the revocation of the tax exempt status of a 501 (c)(3) organization for political activities, the Tenth Circuit Court of Appeals in Christian Echoes National Ministry, Inc. v. United States held that the revocation of the tax exempt status due to lobbying and political activities did not violate any First Amendment rights of the organization or deny it any Fifth Amendment due process of law.[9] The Court noted that from the earliest days of the history of federal income taxation Congress has exempted certain organizations from taxation such as those organized and operated exclusively for charitable, religious and other purposes. The theory behind such exemption is that the government makes up this loss of income tax revenue by not having to provide for these services offered by such organizations from appropriations from public funds.[10] Such tax exemptions are matters of legislative grace, and the limitations in section 501 (c)(3) relating to political activities and lobbying activities results from a congressional policy that the public funds of the United States Treasury should be neutral in political affairs and that political actvities and lobbying activities should not be subsidized.[11]

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[7] See Appendix B *infra* which lists 26 U.S.C. § 501(c) and the organizations and associations covered under that provision.

[8] See generally 26 U.S.C. § 501 (c)(3).

[9] 470 F. 2d 849, 857-858 (10th Cir. 1972), *cert. den.* 414 U.S. 864 (1973).

[10] *Id.*, 853-854. See also, H.R. Rep. No. 1860, 75th Cong., 3d Sess. 19 (1939).

[11] *Id.*, 854.

In *Haswell v. United States*, the United States Court of Claims in 1974 also noted (1) that tax exemptions are matters of legislative grace, (2) that taxpayers have the burden of establishing entitlements to such exemptions; and (3) that any limitations relating to such exemptions stem from congressional policy that the United States Treasury should be neutral in regard political activities and lobbying activities.[12] The Court of Claims in *Haswell* denied a taxpayer a refund on payments that were made to an association organized to preserve and expand railroad passenger service because the association's operations relative to legislation involved political activities rather than nonpartisan analysis, research, and advice. Moreover, it was found that political activities were a substantial part of the activities of the association since its expenditures on political activities during two years approximated 20 percent of its total expenditures.[13] The Court of Claims also held that the denial of a charitable deduction for a taxpayer's payments to the association did not violate the taxpayer's First Amendment rights of freedom of speech and right to petition or deny the taxpayer due process of law as guaranteed by the Fifth Amendment.[14]

In a 1983 Supreme Court decision, in *Regan v. Taxation With Representation*,[15] the Supreme Court in an unanimous opinion held that the prohibition against lobbying in section 501 (c)(3) of the Internal Revenue Code did not violate any First Amendment rights and did not violate the equal protection component of the Fifth Amendment even though veterans' organizations were allowed under section 501 (c)(19) of the Internal Revenue Code to carry on extensive lobbying activities.[16] The *Regan* Court asserted that Congress is not required by the First Amendment to subsidize lobbying and does not infringe on any First Amendment rights when it does not allow deductible contributions to certain organizations that engage in lobbying activities.[17]

The *Regan* Court asserted that legislatures have broad latitude in creating

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[12] 500 F. 2d 1133, 1140 (Ct. of Claims, 1974), *cert. den.* 419 U.S. 1107 (1975).

[13] *Id.*, 1136.

[14] *Id.*, 1150.

[15] _______ U.S. _______, 76 L. Ed. 2d 129 (1983).

[16] *Id.*, 137-138.

[17] *Cf. Cammarano v. United States*, 358 U.S. 498, 513 (1959) in which the Supreme Court held that Congress did not infringe any First Amendment rights or regulate any First Amendment activity by denying business expense deductions for lobbying activities. A tax deduction was not denied because

(Continued)

classifications and distinctions in the field of taxation. Congress has broad power under the Constitution to provide for such distinctions and classifications in tax statutes. The sections of the Internal Revenue Code that are at issue do not employ suspect classifications, and the distinction between the veterans' organizations and other charitable organizations are not like distinctions based on race or national origin.[18] The Regan Court noted that it is not irrational for Congress to condition a tax exempt status of an organization on its refraining from political and lobbying activities so that such activities are not subsidized by the government at the taxpayers' expense. And it is not irrational for Congress to decide that, even though it will not not enact tax statutes that would subsidize substantial lobbying by charitable organizations in general, it will subsidize by appropriate tax legislation lobbying activities by veterans' organizations.[19] Some of the reasons that were given for the difference in treatment of the veterans' organizations in comparison to other charitable organizations were as follows: (1) the mental and physical hazards of veterans, (2) the economic and family detriments of veterans, and (3) the long standing policy of compensating veterans with certain advantages for their past contributions.[20]

III. Power of Congress To Enact Legislation Conditioning The Receipt of Government Funds On Refraining From Political Activities

The thrust of the proposed legislation under consideration is not to deny tax exempt status to organizations which engage in political and/or lobbying activities; the legislation does not amend the Internal Revenue Code or title 26 of the United States Code relating to taxation. But rather the

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(Continued)
petitioners engaged in constitutionally protected activities but petitioners are simply being required to pay for such activities. Id., 513. The concurring opinion in Regan notes that constitutional questions that might be raised by denying a federal benefit on the basis of the exercise of constitutional rights were avoided by the possibility of creating lobbying and nonlobbying affiliates. 76 L. Ed. 2d at 141 (Blackmun, J.) (concurring) ("Because lobbying is protected by the First Amendment, §501(c)(3) therefore denies a significant benefit to organizations choosing to exercise their constitutional rights. The constitutional defect that would inhere in §501(c)(3) alone is avoided by §501(c)(4). As the court notes TWR may use its present §501(c)(3) organization for its nonlobbying activities and may create a §501(c)(4) affiliate to pursue its charitable goals through lobbying.") See also Harris v. McRae, 448 U.S. 297 317 n. 19 (1980); Citizens Energy Coalition v. Sevdak, 459 F. Supp. 248, 258 (S.D. Ind. 1978), aff'd, 594 F.2d 1158 (7th Cir. 1979).

[18] 76 L. Ed 2d at 138-139.

[19] Id., 140.

[20] Ibid.

legislation goes further and would deny all government funding[21] to certain organizations engaging in political activities [section 501(c) organizations under title §26, United States Code].

Congress has the powers, as was mentioned in the Regan Supreme Court decision, to enact legislation that would in effect deny tax exemptions to certain organizations for political and lobbying activities. And the decision by Congress not to subsidize the exercise of a basic fundamental First Amendment right of political advocacy does not infringe that right and is not subject to strict scrutiny.[22] And Congress has the power to decide that it will not subsidize political and lobbying activities by charitiable organizations in general but that it will subsidize lobbying activities by veterans' organizations.[23]

The spending power of Congress under the Constitution is quite broad. Under Article I, section 8, clause 1, Congress has the power "to provide for the...general welfare," and this power is an independent grant of legislative authority which is distinct from other congressional powers. The scope of this power is quite expansive especially in view of its enlargement under the necessary and proper clause of Article I, section 8, clause 18. In Buckley v. Valeo[24] the Supreme Court, found that public financing of presidential elections was within the spending power of Congress to authorize such expenditure of public money. The Buckley Court held that Congress was legislating for the "general welfare," and whether the chosen means of public financing was an unwise or unworkable means was irrelevant. Public financing, according to the Buckley Court, was within the spending power of Congress under Article I, section 8.[25]

However, Congress has often utilized its spending power under the Constitution to further its policy objectives by imposing conditions on the receipt of public funds so that such funds may not be received except upon compliance by the recipient with federal statutory and administrative directives. The Supreme Court has on a number of occasions upheld against constitutional challenge the use of such techniques that provide conditions upon the receipt of public funds so as to induce state and local governments or organizations or private parties to cooperate voluntarily with public policy.[26] The federal government has the constitutional power to fix the terms on which federal grants or public moneys are allotted to the states.[27] The power to spend seems to be as broad as the power to tax, and the spending power is within the control of Congress under Article I, section 9, clause 7 which provides that "No money shall be drawn from the Treasury, but in consequence of appropriations made by law." And the power of Congress to spend can be utilized generally for whatever purpose Congress chooses, including the imposition of conditions which must be complied with before certain funds may be disbursed. For example, conditional grants-in-aid, which makeup a large proportion of federal grants to the states, are an accepted and established part of the congressional spending power.[28] Consequently, it would seem that Congress under its broad power to spend would have the authority under the Constitution to enact legislation that would condition the receipt of government funds to certain organizations on their refraining from certain "political advocacy"[29]

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[21] See S. 1405, § 3 (b)(2), 98th Cong., 1st Sess. (1983). Government funds would include the following: (1) all money, (2) in-kind support, direct or indirect, (3) grants, (4) loans, and (5) cooperative agreements which are funded from the Treasury.

[22] 76 L. Ed. 2d at 140.

[23] Ibid.

[24] 424 U.S. 1 (1976).

[25] Id., 90-91. See also, United States v. Butler, 297 U.S. 1, 65-66 (1936). Buckley also held that the Federal Election Campaign Act provision restricting campaign contributions did not violate the First Amendment, although its restrictions on independent expenditures did, 424 U.S. 1, 23-38, 39-59 (1976); see discuss infra.

26/ See, for example, Fullilove v. Klutznick, 448 U.S. 448 (1980) in which the Supreme Court upheld the minority business enterprise provision of the Public Works Employment Act of 1977 that conditioned the receipt of federal funds on the use of at least 10 percent of such funds for services or supplies from minority businesses, Id., 486-489. See also, Lau v. Nichols, 414 U.S. 563, 569 (1974) conditioning the receipt of federal financial assistance on providing English language instruction in certain minority school districts; and Oklahoma v. Civil Service Commission, 330 U.S. 127, 143 (1947) conditioning any administration of federal funds on refraining from any political partisanship in accordance with the Hatch Act.

27/ 330 U.S. at 142-143.

28/ Bernard Schwartz, A Commentary On The Constitution Of The United States, Part I, "The Powers Of Government" (New York: The MacMillan Co., 1963) pp. 163-164.

29/ See the definition of "political advocacy" in section 3 (b) (3) of S. 1405 in the Appendix A infra.

since it has been well settled that Congress has the power to impose conditions on the receipt of federal funds.[30]

IV. First Amendment Issues Raised By Prohibitions of Government Funds To Organizations Engaging In Political Advocacy

Also at issue is whether the overall restriction on certain organizations from engaging in political advocacy would be violative of certain free speech, association, and expression rights under the First Amendment. In the First Amendment area, two tests are often used to determine the constitutionlity of statutory provisions that affect free speech and expression rights, namely, the vagueness and overbeadth tests. The vagueness test determines whether or not a statatory provision fairly informs a person of what is commanded or prohibited, and it if does not, the provision may be unconstitutional as violative of due process.[31] The vagueness test has been the basis for voiding numerous laws in the First Amendment area especially in such areas as: (1) loyalty oaths,[32] (2) obscenity,[33] (3) restrictions on public demonstrations,[34] and (4) restrictions on door-to-door canvassing.[35]

The overbreadth test is often combined with the vagueness test to determine the constitutionality of a statutory provision. The overbreadth doctrine focuses on the necessity of drafting a statute that infringes on certain First Amendment rights with precision so that such rights are not

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30/ In *Oklahoma v. Civil Service Commission* 330 U.S. 127, 143 the Supreme Court held that Congress had the power to impose conditions upon grants-in-aid by requiring that those who administer public funds to abstain from active political partisanship since the purpose of the federal statute (the Hatch Act) was to provide for politically neutral government service. In *Harris* v. *McRae*, 448 U.S. 297 (1980), the Court upheld the power of Congress to restrict federal funding of abortions. Congress has also restricted the use of federal funds for political advocacy activities in a number of specific instances; see e.g. 42 U.S.C. §2996(f)(a)(5) (restrictions on Legal Services Corporation funds); Pub. L. 98-139, §509 (restrictions on the use of funds under the Labor, Health and Human Services, and Education Appropriation Act of 1984).

31/ Black's Law Dictionary, "Vagueness Doctrine," p. 1389 (5th ed. 1979).

32/ See, for example, *Cramp v. Board of Public Instruction*, 368 U.S. 278 (1961); *Baggett v. Bullitt*, 377 U.S. 360 (1964), *Keyishian v. Board of Regents*, 385 U.S. 676 (1968).

33/ See, for example, *Winters v. New York*, 337 U.S. 507 (1948); *Burstyn v. Wilson*, 343 U.S. 495 (1952); and *Interstate Circuit v. City of Dallas*, 390 U.S. 676 (1968).

34/ See, for example, *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *Gregory v. City of Chicago*, 394 U.S. 111 (1969); and *Coates v. City of Cincinnati*, 402 U.S. 611 (1971).

35/ See, for example, *Hynes v. Mayor of Oradell*, 425 U.S. 130 (1974).

violated. An overbreadth statute is one that sweeps under its coverage both protected and unprotected speech and conduct and is facially invalid.[36]

In the 1976 Buckley v. Valeo decision, the Supreme Court upheld the vagueness and overbreadth tests to certain provisions of the Federal Election Campaign Act of 1971, as amended (FECA).[37] The Court considered whether the expenditure limitation provision of section 608 (e) (1) of the FECA was unconstitutionally vague.[38] According to the Buckley Court the test that must be applied is whether the language of the statutory provision is so precisely drawn so that the innocent are not trapped without fair warning or by arbitrary or discriminatory application of the statutory provision and so that expression is not inhibited.[39] The Court found the expenditure limitation provision of the FECA to be unconstitutionally vague and that it impermissibly burdened the First Amendment rights of speech and expression and failed to serve any substantial governmental interests in preventing corruption or the appearance of corruption in the electoral process.[40] The Buckley Court also considered whether section 434 (e) of the Federal Election Campaign Act of 1971, as amended was unconstitutional because of vagueness; section 434 (e) required persons making contributions or expenditures in excess of $100, other than a contribution to a political committee or a candidate, to file a statement with the Federal Election Commission.[41] Although the Buckley Court upheld this disclosure provision, the Court noted that it had raised serious vagueness problems since the violation of its terms caused criminal penalites and since the fear of incurring such sanctions may deter those seeking to exercise First Amendment rights.[42]

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[36] The overbreadth doctrine requires that a statutory provision be invalidated if it punishes people for constitutionally protected speech or conduct. See, Black's Law Dictionary, "Overbreadth Doctrine, "p. 994 (5th ed. 1979). A law is void under the overbreadth doctrine when it"...does not aim specifically at evils within the allowable area of control, but..sweeps within its ambit other activities that constitute an exercise... of protected First Amendment rights." See, Thornhill v. Alabama, 310 U.S. 88, 97 (1940); Zwickler v. Koota, 389 U.S. 241 (1967); Aptheker v. Secretary of State, 378 U.S. 300 (1964); United States v. Robel, 389 U.S. 258 (1967); and Gooding v. Wilson, 405 U.S. 518 (1972).

[37] 424 U.S. 1, 29-30 (overbreadth doctrine discussion), 39-45, 74-81 (vagueness doctrine discussion) (1976).

[38] Section 608 (e) (1) prohibited expenditures by individuals and groups that exceeded $1,000 relative to a clearly defined candidate during the calendar year. See, Pub. L. 93-443, tit. I, § 101 (e), 88 Stat. 1265 (1974) (The provision was codified at 18 U.S.C. § 608 (e)).

[39] 424 U.S. at 40-41. See also, Grayned v. City of Rockford, 408 U.S. 104, 108-109 (1972); Baggett v. Bullitt, 377 U.S. 360, 372 (1964); and Speiser v. Randall, 357 U.S. 513, 526 (1958).

[40] 424 U.S. at 42-45.

[41] See, Pub. L. 93-443, tit. II, § 204(e), 88 Stat. 1278 (1974). The sole purpose of section 434 (e) was to aid in the enforcement of the independent expenditure limitation of section 608 (e)(1).

At issue in regard to the proposed legislation under consideration is whether the provisions that would prohibit certain organizations from receiving federal funds if they engage in political advocacy are consitutional in light of the vagueness and overbreadth doctrines. The proposed legislation may pose certain First Amendment vagueness problems since any violations of the provisions which affect First Amendment rights carry criminal penalties[43] and since the fear of incurring such sanctions may deter persons from exercising their protected First Amendment rights of speech, expression, and association.[44] The provisions of this proposed legislation would deny all federal funds to certain recipient organizations who would engage in political advocacy. Do these provisions fairly inform such recipient organizations of what is "political advocacy"[45] and of what is commanded or prohibited so that they will clearly understand what the restrictions are and be able to conduct their work without loss of federal funding? And are such provisions as clear, precise, and specific as they should be to withstand serious scrutiny by the courts under the vagueness test of the First Amendment?

Also are there First Amendment overbreadth problems with this proposed legislation? The overbreadth test, as has been mentioned, is concerned whether a statutory provision would punish people or organizations for constitutionally protected speech or conduct. The doctrine is concerned with a statutory provision's "chilling effect" on protected First Amendment activities as well as the extent to which a statute operates as a disincentive to certain activities that come within the protection of the First Amendment.[46] And the reason for invalidating a statutory provision because of its overbreadth is to eliminate the provision's deterrence of constitutionally protected activities.[47]

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[42] 424 U.S. at 76-77.

[43] See S. 1405, § 6 [enforcement section], 98th Cong., 1st Sess. (1983) in Appendix A infra.

[44] See discussion of the vagueness doctrine in Buckley v. Valeo, 424 U.S. at 76-77.

[45] See the definition of "political advocacy" in section 3 (b) (3) of S. 1405, 98th Cong., 1st Sess. (1983) in the Appendix A infra.

[46] See, Zwickler v. Koota, 389 U.S. 241, 256, n.2 (1967). And see, Note, The First Amendment Overbreadth Doctrine, 83 Harvard L. Rev. 844, 853 (1970).

Can arguments be made that the proposed legislation that would deny federal funds to certain recipient organizations because of political advocacy has certain attributes of overbroad legislation? It is arguable that under such legislation recipient organizations may feel deterred from making contacts with government officials, government agencies, Members of Congress and their staffs, and congressional and presidential candidates for fear of being tainted with political advocacy and the resulting loss of federal funds which may be necessary for their continued viability and existence. If the degree of deterrence due to such prohibitions is so substantial as to have a "chilling effect" on or be a prior restraint of[48] the protected First Amendment rights of such organizations in their speech, expression, and association with federal agencies and federal officials, then the prohibitions may have overbreadth problems in violation of the First Amendment. It is arguable that for Congress to seek to prevent the use of federal funds for political advocacy by prohibiting organizations from expending public funds, private funds or both for such advocacy is to prohibit both protected and unprotected activity. A less sweeping prohibition against the expenditure of federal funds for political advocacy purposes would presumably be less constitutionally suspect.

The definition of "political advocacy" of the proposed legislation[49] seems to be quite broad and inclusive as to general types of political activities that would be prohibited so much so that recipient organizations which are prohibited from engaging in such political advocacy may refrain from protected First Amendment activities of speech, expression, and association for fear of being in violation of such provisions. The definition of "political advocacy", it seems, should be tightened and made more specific to avoid any First Amendment problems. For example, one of the various types of activities that is included under the definition of "political advocacy"

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[47] 83 Harvard L. Rev. at 853.

[48] See, Thomas v. Collins, 323 U.S. 516, 532 (1945) in which the Supreme Court invalidated a state statutory provision which required labor organizers to register with the state and procure an organizer's card before soliciting memberships since the provision imposed a prior restraint on a labor organizer's rights of free speech and assembly in violation of the First and Fourteenth Amendments of the Constitution.

[49] See S. 1405, § 3 (b) (3), 98th Cong., 1st Sess. (1983) in the Appendix A infra.

which would be prohibited by certain organization receiving federal funds is "attempting to affect the opinions of the general public, or any segment thereof, with respect to govermental decisions."[50] This particular provision as it is presently worded may have a chilling effect on the advertising operations in the print and electronic media of covered organization which may opt to refrain from any advertisments or substantially reduce such advertisements for fear of violating this provision and incurring any sanctions.

In summary, it would seem that Congress would have the power to enact such legislation that would impose conditions, on the organizations that would be the recipients of federal grants or federal funds such as prohibiting certain specific, well-defined types of political advocacy with federal funds. Conditional grants-in-aid have been an accepted part of the congressional spending power. However, to prohibit the receipt of goverment funds because of political advocacy by certain organization in such a way that would have a chilling effect on the First Amendment rights of such organizations may result in certain vagueness and overbreadth problems[51] which may have to be more carefully scrutinized, especially as to the definition of "political advocacy." It would seem that the focus should be on federal funds and the definition of "political advocacy" and the types of such advocacy listed under it should be tightened and made more specific in order to avoid any First Amendment problems.

Thomas M. Durbin
Legislative Attorney
American Law Division
April 23, 1984

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[50] See S. 1405, § 3 (b)(3) (c), 98th Cong., 1st Sess. (1983) in Appendix A infra.

[51] See Buckley v. Valeo, 424 U.S. at 76-77.

Appendix A

98TH CONGRESS
1ST SESSION

S. 1405

To assure the first amendment rights of all citizens and to provide criminal penalties for violations thereof.

IN THE SENATE OF THE UNITED STATES

JUNE 6, 1983

Mr. DENTON introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To assure the first amendment rights of all citizens and to provide criminal penalties for violations thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Neutrality Act of 1983".

DECLARATION OF PURPOSE

SEC. 2. The Congress finds that—

(1) Government funds are being used to finance and otherwise to subsidize private political advocacy;

(2) the expenditure of Government funds for private political advocacy exceeds the jurisdiction of the

Federal Government by not providing for the general welfare of the United States;

(3) the expenditure of Government funds for private political advocacy exceeds the jurisdiction of the

Federal Government by preferring those political and ideological views, and the organized expression of such views, of the recipients of Government funds over the views of others who do not receive Government funds;

(4) the expenditure of Government funds in furtherance of such private political advocacy exceeds the jurisdiction of the Federal Government by abridging the freedom of speech and freedom of the press that are exclusive rights of the people;

(5) the expenditure of Government funds for privage political advocacy exceeds the jurisdiction of the Federal Government by abridging the exclusive right of the people to petition the Government for redress of grievances;

(6) the expenditure of Government funds for private political advocacy by groups having tax-exempt status is, in effect, a double public benefit for the advocacy of these groups;

(7) the expenditure of Government funds for private political advocacy is often beyond or contrary to the intent of Congress when it appropriates funds for specific programs; and

(8) the unauthorized use of Government funds for private political advocacy threatens the very fabric of the political process.

PROHIBITIONS

SEC. 3. (a)(1) No Government funds may be disbursed to any recipient organization which engages in political advocacy or which is an affiliate of any organization which engages in political advocacy;

(2) No Government funds received from the United States or from one of its instrumentalities or agents, may be used for political advocacy;

(3) Any recipient organization which uses Government funds to engage in political advocacy must reimburse the Federal Treasury the total amount of Government funds received for any program(s), grant(s), contracts or other source of Government funds from which the funds used for political advocacy were obtained.

DEFINITIONS

(b) For the purposes of this Act—

(1) "recipient organization" as used herein includes any entity or person employed by such entity which receives Government funds and is exempt from taxation pursuant to section 501(c) of the Internal Revenue Code;

(2) "Government funds" as used herein includes all money and/or in-kind support, direct or indirect, provided to a recipient organization whether by grant, loan contract, cooperative agreement, or any other similar means, funded by or from the Treasury of the United States;

(3) "political advocacy" as used herein includes—

(A) attempting to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through contributions, endorsements, publicity, or similar activity;

(B) establishing, administering, contributing to, or paying the expenses of a political action committee, either directly or indirectly;

(C) attempting to affect the opinions of the general public, or any segment thereof, with respect to governmental decisions;

(D) attempting to influence governmental decisions through communication with any member or employee of a legislative body, or with any Government official or employee who may participate in the decisionmaking process;

(E) participating in or contributing to the expenses of judicial or administrative litigation other than litigation in which the organization is a party, with standing to sue, to intervene as a party, or to defend on its own behalf;

(F) dues paying or contributing money, services, or any other thing of value, to an organization that engages in political advocacy;

(G) conducting or supporting training programs which encourage or provide guidance with respect to political advocacy, boycotts, picketing, strikes, or demonstrations;

(H) networking or the organization of, or assistance in, the organization of any organization, association, coalition, alliance, federation, confederation, or similar entity, a purpose of which will be to engage in political advocacy;

(I) publication of any analysis, study, research, memorandum, or statement of policy which is prepared or published with the intent or design of having an influence upon the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, or any Government decisions;

(J) presenting of any program, addressed to the public, any portion of which is intended, calculated, or designed to influence any governmental decisions; or

(K) the conduct of any of the above-enumerated actions constituting political advocacy by or through one or more affiliates;

(4) "political advocacy" as used herein does not include—

(A) providing technical advice or assistance to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision;

(B) appearances before, or communication to, any legislative body with respect to a possible decision of such body which would affect the existence of the organization, its powers and duties, tax-exempt status, or the deduction of contributions to the organization;

(C) communications between the organization and its bona fide members with respect to pending or proposed legislation which would affect the existence of the organization, its powers and duties, tax-exempt status, or the tax deduction of contributions to the organization;

(D) participating in litigation on behalf of individuals, if the recipient organization has received a Federal, State, or local grant, contract, or other agreement for the express purpose of doing so;

(E) applying for or making a bid in connection with a grant, contract, unsolicited proposal, or other agreement, or providing information in connection with such application at the request of the Government agency awarding the grant, contract, or other agreement;

(F) participating in a particular activity which is specifically directed and/or sanctioned by an Act of Congress, and where the activity is a purpose of the recipient organization's grant or contract; or

(G) participating in a particular activity which constitutes only collective bargaining as to wages, hours, benefits, or working conditions by an organized labor or trade union, as defined in section 152(5), of title 29, United States Code, on behalf of employees of any Federal, State, or local government which the labor or trade union represents;

(5) "networking" includes activities intended to aggregate resources and further organizational cooperation in the context of political advocacy;

(6) "publication" means the preparation, production, and distribution of writings, films, radio, television, and telephone communications, books, pamphlets, journals, newsletters, newspapers, articles, public appearances, press interviews, and other communications related to political advocacy;

(7) "dues paying" includes direct and indirect cash and in-kind support or endorsement tendered to organizations or individuals. No recipient of Federal dollars may launder funds or contribute them to any organization or individual which could not certify as to its own lack of political advocacy and promise to refrain from engaging in advocacy. Recipients of Federal funds from any intermediary are subject to all provisions of the Act;

(8) "litigation" includes all actions at law or equity before any Federal, State, or local court or administrative tribunal, and further includes class-action suits or amicus curiae briefs;

(9) "affiliate" includes another organization or group of organizations where—

(A) the governing instrument of either organization requires it to be bound by the decisions of the other organization on matters of political advocacy; or

(B) the governing board of either organization includes persons who—

(i) are specifically designated representatives of the other organization or are members of the governing board, officers or paid executive staff members of such other organization, and

(ii) by aggregating their votes, have sufficient voting power to cause or prevent action on matters of political advocacy by either organization;

An organization may qualify as an affiliate whether or not it is exempt from taxation pursuant to section 501(c) of the Internal Revenue Code, so long as conditions enumerated in subparts (A) or (B), above, are present; and

(10) "Government decisions" as used herein include—

(A) the introduction, passage, amendment, defeat, signing, or veto of legislation, appropriations, resolutions, legislative confirmation of ap-

pointees, or constitutional amendments at the Federal, State, or local level;

(B) any rulemakings, guidelines, policy statements, or other administrative decisions of general applicability and future effect;

(C) any licensing, grant, ratemaking, formal or informal adjudication, other than actions or decisions related to the administration of the recipient organization's specific grant, contract, or agreement involved; or

(D) the decisionmaking process of any Federal, State, or local court.

SUNSHINE

SEC. 4. Within one hundred and eighty days of the effective date of this Act, all departments, agencies, and instrumentalities of the United States disbursing Government funds to recipient organizations shall adopt regulations which require the recipient organizations to which they disburse Government funds to disclose to the disburser of the funds on an annual basis during receipt or use of Federal funds—

(1) the articles of incorporation and bylaws of the recipient organization;

(2) a list of all other government agencies (whether Federal, State, or local) from which the recipient organization is currently receiving funds, a description of the funding level, and the purpose of the funding;

(3) a list of all other government agencies (whether Federal, State, or local) before which the organization currently has applications for funding pending, including a statement of the amount of funds requested and the purpose of the funding;

(4) a list of the names and addresses together with the résumés of the board of directors and operating officers of the recipient organization;

(5) a list of the names, addresses, and types of business conducted by any other organizations or entities upon whose board of directors any of the directors or operating officers of the recipient organization also serve;

(6) a copy of all publications, newsletters, periodicals, pamphlets, journals, or members' reports issued by the recipient organization during the preceding twelve-month period;

(7) a list of the names and addresses of any registered lobbyists employed by the recipient organization or by an affiliate or who are retained by or on behalf of any person or organization to represent the recipient organization with regard to any governmental decisions; and

(8) any other information which the disbursing agency determines to be relevant toward effectuation of the purposes of this Act.

AUDITS

SEC. 5. (1) All departments, agencies, and instrumentalities of the United States shall assume the annual performance of an audit of any recipient organizations to which they have disbursed funds in order to assure compliance with this Act.

(2) Recipient organizations shall make available to authorized Government officials all books, records, and other documents necessary to determine compliance with this Act. Refusal by a recipient organization to make said books, records, or other documents available shall result in cessation of further Government funds to that recipient organization.

ENFORCEMENT

SEC. 6. (1) Certification, under penalty of perjury, by recipient organizations, with respect to noninvolvement in political advocacy, and disclosure, under penalty of perjury, by recipient organizations, are required prior to receipt, renewal, or extension of any contract, grant, or loan, or any other provision of Government funds. Any intentional misrepresentation with respect to the certification or disclosure requirements shall constitute a felony, punishable by a fine up to $10,000 per offense, and/or a prison term not to exceed two years per offense.

(2) All Government officials, or their agents responsible for disbursing Government funds by grant, contract, loan, cooperative agreement, or any similar means, shall establish, prior to their consideration of any prospective recipient organization for funding, that the prospective recipient organization does not presently, and will not in the future, engage in political advocacy. Any agency or instrumentality responsible for the disbursement of Government funds shall—

(A) require that every recipient organization certify, under penalty of perjury, to such agency or instrumentality, at the time of its application for Government funds, that such recipient organization is not engaged in political advocacy and will not engage in political advocacy;

(B) require that every recipient organization disclose, under penalty of perjury, to such agency or instrumentality, at the time of its application for Government funds and annually thereafter, the information required by section 4 of this Act;

(C) require that every renewal or extension of Government funds to any recipient organization contain certifications and disclosures set forth in subsections (A) and (B) of this section;

(D) require that the officers, agents, and employees of such agency or instrumentality establish procedures necessary to guarantee that no recipient organization is engaged in or will engage in political advocacy; and

(E) require that every recipient individual certify, under penalty of perjury, to such agency or instrumentality that such person has not been previously disbarred from the receipt of Federal funds under the provisions of this Act.

(3)(A) Whoever, being an officer or employee of the United States, or of any agency or other instrumentality thereof, or an officer or employee of any corporation chartered by the United States, or of any recipient organization who is found after trial in the appropriate United States district court to have intentionally violated any provision of this Act, shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

(B) Whoever, being an officer or employee of the United States, any agency or other instrumentality thereof, or an officer or employee of any corporation chartered by the United States, or of any recipient organization who negligently violates any provision of this Act shall, upon such a finding after trial in the appropriate United States district court, be subject to discharge and forfeiture of office or such other penalty as the court shall prescribe.

(C) The United States or any private citizen thereof shall have a civil cause of action against any person or recipient organization for violations of any provision of this Act. A private citizen may only commence an action in the event there is not already an action pending by the United States, against a person or recipient organization for alleged violations of any provision of this Act, on the date the private citizen files his action. Any such action shall be filed in an appropriate United States District Court. A prevailing plaintiff shall be entitled to recover—

(a) the amount of Government funds expended for political advocacy, but in no event less than $10,000;

(b) in the case of a judgment entered on behalf of the United States or any instrumentality thereof, three times the amount of Government funds expended for political advocacy;

(c) such equitable relief as the court shall deem appropriate;

(d) an order disbarring any recipient organization found in violation of this Act from receiving any Government funds;

(e) reasonable attorney's fees and costs of investigation and litigation actually incurred; and

(f) punitive damages.

(4) Prosecution for violation of this Act will extend to all employees of the Federal Government, federally chartered corporations, as well as officers and employees of recipient organizations.

(5) Any violation of this statute shall be the basis for total disbarment of Federal benefits from any source or agreement whatsoever.

RIGHT TO APPEAL, ALTER, OR AMEND

SEC. 7. The right to repeal, alter, or amend this Act at any time is expressly reserved.

EFFECTIVE DATE

SEC. 8. This Act shall take efffect on the date signed by the President of the United States.

SEVERABILITY

SEC. 9. If any provision of this Act, or the application thereof to any person, organization, or circumstance, is held invalid, the provision to other persons, organizations, or circumstances shall not be affected thereby.

Appendix B
501 (c) Organizations Of The Internal Revenue Code
[title 26, United States Code]

(c) List of exempt organizations. The following organizations are referred to in subsection (a):

(1) Corporations organized under Act of Congress, if such corporations are instrumentalities of the United States and if, under such Act, as amended and supplemented, such corporations are exempt from Federal income taxes.

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(5) Labor, agricultural, or horticultural organizations.

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(7) Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

(8) Fraternal beneficiary societies, orders, or associations—

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

(9) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

(10) Domestic fraternal societies, orders, or associations, operating under the lodge system—

(A) the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and

(B) which do not provide for the payment of life, sick, accident, or other benefits.

(11) Teachers' retirement fund associations of a purely local character, if—

(A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and

(B) the income consists solely of amounts received from public taxation, amounts received from assessments on the teaching salaries of members, and income in respect of investments.

(12)(A) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

(B) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from a nonmember telephone company for the performance of communication services which involve members of the mutual or cooperative telephone company,

(ii) from qualified pole rentals, or

(iii) from the sale of display listings in a directory furnished to the members of the mutual or cooperative telephone company.

(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued from qualified pole rentals.

(D) For purposes of this paragraph, the term "qualified pole rental" means any rental of a pole (or other structure used to support wires) if such pole (or other structure)—

(i) is used by the telephone or electric company to support one or more wires which are used by such company in providing telephone or electric services to its members, and

(ii) is used pursuant to the rental to support one or more wires (in addition to the wires described in clause (i)) for use in connection with the transmission by wire of electricity or of telephone or other communications.

For purposes of the preceding sentence, the term "rental" includes any sale of the right to use the pole (or other structure).

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(14)(A) Credit unions without capital stock organized and operated for mutual purposes and without profit.

(B) Corporations or associations without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of shares or deposits in—

(i) domestic building and loan associations,

(ii) cooperative banks without capital stock organized and operated for mutual purposes and without profit, or

(iii) mutual savings banks not having capital stock represented by shares.

(C) Corporations or associations organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for associations or banks described in clause (i), (ii), or (iii) of subparagraph (B); but only if 85 percent or more of the income is attributable to providing such reserve funds and to investments. This subparagraph shall not apply to any corporation or association entitled to exemption under subparagraph (B).

(15) Mutual insurance companies or associations other than life or marine (including interinsurers and reciprocal underwriters) if the gross amount received during the taxable year from the items described in section 822(b) (other than paragraph (1)(D) thereof) and premiums (including deposits and assessments) does not exceed $150,000.

(16) Corporations organized by an association subject to part IV of this subchapter or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, on dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(17)(A) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if—

(i) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities, with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(ii) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees, and

(iii) such benefits do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees. A plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(B) In determining whether a plan meets the requirements of subparagraph (A), any benefits provided under any other plan shall not be taken into consideration, except that a plan shall not be considered discriminatory—

(i) merely because the benefits under the plan which are first determined in a nondiscriminatory manner within the meaning of subparagraph (A) are then reduced by any sick, accident, or unemployment compensation benefits received under State or Federal law (or reduced by a portion of such benefits if determined in a nondiscriminatory manner), or

(ii) merely because the plan provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under State or Federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such laws if such employees were eligible for such benefits, or

(iii) merely because the plan provides only for employees who are not eligible under another plan (which meets the requirements of subparagraph (A)) of supplemental unemployment compensation benefits provided wholly by the employer the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such other plan if such employees were eligible under such other plan, but only if the employees eligible under both plans would make a classification which would be nondiscriminatory within the meaning of subparagraph (A).

(C) A plan shall be considered to meet the requirements of subparagraph (A) during the whole of any year of the plan if on one day in each quarter it satisfies such requirements.

(D) the term "supplemental unemployment compensation benefits" means only—

(i) benefits which are paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

(ii) sick and accident benefits subordinate to the benefits described in clause (i).

(E) Exemption shall not be denied under subsection (a) to any organization entitled to such exemption as an association described in paragraph (9) of this subsection merely because such organization provides for the payment of supplemental unemployment benefits (as defined in subparagraph (D)(i)).

(18) A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(A) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of benefits under the plan,

(B) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees, and

(C) such benefits do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees. A plan shall not be considered discriminatory within the meaning of this subparagraph merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(19) A post or organization of past or present members of the Armed Forces of the United States, or any auxiliary unit or society of, or a trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions.

(B) at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows, or widowers of past or present members of the Armed Forces of the United States or of cadets, and

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(20) an organization or trust created or organized in the United States, the exclusive function of which is to form part of a qualified group legal services plan or plans, within the meaning of section 120. An organization or trust which receives contributions because of section 120(c)(5)(C) shall not be prevented from qualifying as an organization described in this paragraph merely because it provides legal services or indemnification against the cost of legal services unassociated with a qualified group legal services plan.

(21) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

(A) the purpose of such trust or trusts is exclusively—

(i) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts;

(ii) to pay premiums for insurance exclusively covering such liability; and

(iii) to pay administrative and other incidental expenses of such trust (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the trust and the processing of claims against such person under Black Lung Acts; and

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in subparagraph (A)) in—

(I) public debt securities of the United States,

(II) obligations of a State or local government which are not in default as to principal or interest, or

(III) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act, 12 U.S.C. 1752(6)) located in the United States, or

(iii) payment into the Black Lung Disability Trust Fund established under section 9501, or into the general fund of the United States Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust). For purposes of this paragraph the term "Black Lung Acts" means part C of title IV of the Federal Mine Safety and Health Act of 1977, and any State law providing compensation for disability or death due to pneumoconiosis.

(22) A trust created or organized in the United States and established in writing by the plan sponsors of multiemployer plans if—

(A) the purpose of such trust is exclusively—

(i) to pay any amount described in section 4223(c) or (h) of the Employee Retirement Income Security Act of 1974 [29 USCS § 1403(c), (h)], and

(ii) to pay reasonable and necessary administrative expenses in connection with the establishment and operation of the trust and the processing of claims against the trust,

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) the investment in securities, obligations, or time or demand deposits described in clause (ii) of paragraph (21)(B),

(C) such trust meets the requirements of paragraphs (2), (3), and (4) of section 4223(b), 4223(h), or, if applicable, section 4223(c) of the Employee Retirement Income Security Act of 1974 [29 USCS § 1403(b)(2)–(4), (c), (h)], and

(D) the trust instrument provides that, on dissolution of the trust, assets of the trust may not be paid other than to plans which have participated in the plan or, in the case of a trust established under section 4223(h) of such Act [29 USCS § 1403(h)], to plans with respect to which employers have participated in the fund.

(23) any association organized before 1880 more than 75 percent of the members of which are present or past members of the Armed Forces and a principal purpose of which is to provide insurance and other benefits to veterans or their dependents.

The Heritage Lectures 26

Halting Taxpayer Subsidy of Partisan Advocacy

by Marshall J. Breger

The Heritage Foundation

Halting Taxpayer Subsidy of Partisan Advocacy

Marshall J. Breger[*]

The problem of government intervention in the democratic process is a complex issue in political theory. Long a hardy perennial for political science courses, it became a serious issue only in the last forty years with the rise of the welfare state. Indeed, the interpenetration of the public and private sectors in this century has led to increased difficulty in assessing the proper limits of public subsidy for partisan advocacy.

This issue is not merely the stuff of intellectual debate. Through its grant and contract activity the federal government indirectly pays millions of dollars for political advocacy by both business and non-profit groups. For example, Community Services Administration (CSA) grantees have prepared sample letters for constituents to oppose Administration budget proposals, have urged readers of a grantee magazine to write their Congressmen to oppose curtailment of the food stamp program, and have circulated memos urging Congressmen to support continuance of the Health Planning Program.[1] Over $42,000 of Family Planning Grant money under Title X of the Public Service Act has been used to pay dues to organizations that lobby on a regular basis.[2] The Organization of Chinese American Women, using funds provided under the Womens Educational Equity Act, brought at least 20 chapter representatives to a national conference in Washington whose printed schedule included how-to lectures on political action and planned visits to Capitol Hill for meetings with legislators.[3] Los Angeles CETA workers circulated political petitions for candidates and walked precincts on behalf of Jimmy Carter, all on government-paid time.[4]

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[1] See, U.S. Department of Justice, Office of Legal Counsel Memorandum, Re: Questions Concerning Lobbying by Federal Grantees, July 1, 1981.

[2] Report of the Comptroller General, *Restriction on Abortion and Lobbying Activities in Family Planning Programs Need Clarification*, HRD 82-106 at p. 25 (September 24, 1982). Grantees provided free space to lobbying organizations and paid the salaries of persons engaged in a grassroots write-in campaign to Congress. In fairness, the GAO suggested that existing guidelines in this area were unclear.

[3] See Organization of Chinese American Women, National Conference Schedule, June 19-20, 1983.

The situation is similar with defense contracts. In a recent audit of Lockheed C-5A aircraft expenditures, the General Accounting Office found that "because of the commingling of improper lobbying activities with legitimate contract work and the inability of the current system to enforce rigid distinctions," it was unable to determine the specific amount of employee time improperly used.[5] However, over $496,000 was spent by Lockheed on this lobbying effort, not counting $265,190 on commercial advertisements, and Lockheed claimed government reimbursement for $287,000 or almost 50 percent of these costs.[6] In the past the federal government has picked up the costs of memberships in the Bethesda Country Club and the Washington Golf and Country Club for Washington representatives of defense contractors as well as the cost of goosehunts in rural Maryland for company employees and "unidentified" guests—all to assist company lobbying efforts.[7]

The Reagan Administration has attempted to cut back on these subsidies with varying degrees of success. The Office of Personnel Management (OPM) has tried to restrict advocacy groups from participating in the Combined Federal Campaign (the government's United Way program).[8] Both the Congress and the Legal Services Corporation have sought to limit lobbying with public funds by legal services attorneys.[9]

Perhaps the most controversial of these efforts, however, was the Office of Management and Budget effort in January 1983 to revise Circular A-122 (Cost Principles for Non-Profit Organizations) designed to limit government subsidy of lobbying and political advocacy by recipients of federal grants and contracts.[10] Similar revisions were proposed to existing lobbying regulations that govern civilian and defense contractors. These proposed rule changes came under intense criticism from both non-profits and the business community. In February, the OMB announced it was considering major changes in the proposed regulations. By March, OMB had retreated further, admitting that the first draft was dead. Lobbyists of both the "left" and the "right" had coalesced to protect their fiscal interests.

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[4] Robert Welkes and Claire Spiegel, "Politicking: Another Murky Area for TELACU" (The East Los Angeles Community Union), *Los Angeles Times*, March 28, 1982 at p. 3.

[5] Testimony of Joseph R. Wright, Jr., Deputy Director of the Office of Management and Budget, before the House Committee on Government Operations, March 1, 1983, p. 4.

[6] Charles Mohr, "Pentagon Accused by GAO of Illegal Lobbying," *New York Times*, October 1, 1982, p. 23.

[7] Florence Graves, "The High and the Mighty," *Common Cause*, August 1981, pp. 17-18 (citing from Defense Department audits).

[8] These efforts, however, have been stymied by court decisions requiring an open door to advocacy groups who wish to participate in the Campaign. *NAACP Legal Defense and Education Fund Inc. v. Donald J. Devine*, CA 83-0928 (D.C.D.C., July 15, 1983), on appeal CA 83-1822 (D.C. Cir. 1983).

[9] See GAO Report B-201928, March 5, 1981; B-202787, December 29, 1981; G.O. Comp. Gen. 423 (1981). The issue of lobbying in legal services is reviewed in Marshall Breger, "Legal Aid to the Poor: A Conceptual Analysis," 60 *North Carolina Law Review*, pp. 281, 308-313 (1982). The most recent disclosures may be found in Comp. Gen. B-210338/B-202116 (1983).

In early November, OMB released a "second" draft of its proposed revisions.[11] While both drafts sought the same end—the termination of government subsidy of partisan advocacy—each used a different approach toward reaching this elusive goal.

OMB's First Draft

The OMB first draft would have prohibited employees of federal grant or contract recipients from engaging in political advocacy and charging any part of their salary or supporting costs against their federal grant or contract. Employees of companies or of non-profit organizations receiving government grants or contracts could not accept any salary reimbursement from the government if they engaged in any advocacy at all. If more than 5 percent of the office space of a recipient of government funds were used for advocacy, none of the costs of that space would be reimbursable. No capital equipment, such as photocopiers, could be used for advocacy purposes if partially paid for with federal funds.

Further, OMB's first draft used an expansive definition of political advocacy which ranged far beyond the traditional definition—influencing campaigns and referenda—to encompass communicating with any member or employee of a legislative body, supporting political action committees and trade associations that have "political advocacy as a substantial political purpose," filing amicus curiae briefs, and efforts to influence governmental decisions by influencing the opinions of the general public. The regulation applied to political advocacy aimed at state and local issues as well.[12]

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[10] 48 Fed. Reg. 3348 (Jan. 24, 1983).

[11] 48 Fed. Reg. 50860 (Nov. 3, 1983).

[12] It should be stressed that the first draft's restrictions did not affect grantees who conduct "technical or scholarly studies," file comments on proposed agency rules or are subpoenaed to testify before legislative committees. 48 Fed. Reg. 3348-51 (1983).

OMB's Second Draft

In early November, OMB issued the second draft of its proposed A-122 revisions. This second draft differed from the first in three respects. Most important, the second draft reaches only to the government funds used by grant or contract recipients. Unlike the first draft, a grant or contract recipient can use private funds for lobbying and still receive federal funds for other permissible programs.

It retreated from its expansive definition of lobbying as an effort to influence the opinions of the general public *per se*, proposing a more limited definion which omits restrictions on lobbying at the local level, communications with government officials on matters other than legislation, litigation on behalf of others and payment of dues to associations which engage in substantial amounts of lobbying. While it is likely that this narrower definition will make it more difficult to police the improper use of government funds, the new definitions will bring the regulation closer to the core understanding of lobbying—efforts to directly influence legislative decision-making or to get others to do so. To that extent, the decision to allow recipients of federal grants or contracts to delegate their lobbying to a trade association and have Uncle Sam pay for such economies of scale is a clear deviation from principle and must be understood as such.

Further, the November draft requires that grant or contract recipients facilitate government audit procedures by certifying the accuracy of their cost breakdowns. These record-keeping requirements increase the likelihood of recipient self-scrutiny and help ensure that fiscal sleight-of-hand is not used to hide federal subsidy of lobbying activities.

The Classical Model

The government subsidizes communication in a variety of ways: It funds schools, colleges, public broadcasting, and innumerable other enterprises that directly or indirectly shape political values and public opinion. Some government subsidies are so indirect as to lack even a patina of state control. The funding of parks, for example, may provide a public forum for speakers. Still, one would rarely associate the views articulated in the speakers' corner at London's Hyde Park with those of the British government. On the other hand, much indirect subsidy of speech contains the possibility or perception of government imprimatur. This is true even when government does not itself engage in speech but subsidizes the private speech of others.

The unstated problem with all government subsidy of partisan advocacy is its effect on the marketplace of ideas. In the classical model, ideologies of various stripes compete for public allegiance, and interest groups compete in a pluralist hurly-burly for legislative support. In both contexts, the state stays outside the battle. Only after democratic processes articulate the popular will on a particular issue should the state act to implement that decision. The reality, of course, is far more complex. Often the state independently affects political choices made by citizens. "The actions of government define expectations, confer legitimacy, establish a status quo, and thus necessarily shape the nature and distribution of interests and attitudes in society itself. The state shapes society almost as much as society shapes the state."[13] The autonomy of the state as a social interest group raises serious problems for those concerned with individual liberty. The implications of government's proper role in the marketplace of ideas remains to be adequately explored.[14]

There are at least two responses to the classical model. First, that the model is irrelevant as chimerical and not reflective of reality; and second, that the classical model should be rejected because it is not merely legitimate but even desirable for government to attempt to influence the minds of citizens. Though neither response can be rejected out of hand, both fail to capture important issues raised by government intervention in the political arena.

The contention that the classical model flies in the face of reality reflects the information explosion of the electronic revolution. Some argue that the state can control man's private being, restricting his mind to "approved" ideas only.[15] The possibility of such manipulation might make efforts to maintain government neutrality a fanciful exercise.

There is no doubt that the possibility of government influence on political debate is rife. After all, the federal government is one of the nation's ten largest advertisers.[16] The danger from technology, however, is a sign that we must redouble our efforts to preserve government neutrality in a democratic polity rather than succumb to the blandishments of this species of technological determination.

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[13] Lawrence Tribe, "The Puzzling Persistence of Process-Based Constitutional Themes," 89 *Yale Law Journal* pp. 1063, 1078 (1980).

[14] An ambitious effort at developing a theory of government intervention can be found in Mark G. Yudof, *When Government Speaks: Politics, Law and Government Expression in America* (Berkeley: University of California Press, 1983).

[15] Indeed, as Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, Brace & Jovanovich, 1973), pp. 308-314; and Laslek Kolokowski, "Totalitarianism and the Lie," *Commentary*, May 1983, pp. 33-38, have pointed out, this loss of the private realm is a necessary predicate of totalitarianism.

[16] The problem in other countries may be worse. The Canadian government is the largest advertiser in Canada, promoting such controversial issues as constitutional reform and the nationalization of industy. See Patty Berkowitz,

The harder problem, however, is the normative one. Democracy, as the philosophers have suggested, is not the natural condition of mankind. With Montesquieu, one might well argue that it is the general responsibility of the state to educate its citizens to republican virtue.[17] Indeed, in conditions of wartime, survival dictates that the state nurture patriotism. Even in peacetime the presidency, as Teddy Roosevelt taught, is a bully pulpit.

These examples, however, largely reflect situations where the community holds common normative values and political goals. When pluralistic divergence is the norm, the state should limit overtly political speech to procedural pronouncements, e.g., urging citizens to exercise their right to vote. Partisanship on substantive issues, e.g., suggesting the Democratic or Republican lever is clearly not an appropriate governmental function. The educative function of the state does not extend to political agitation over matters not grounded in prior legislative agreement or an overreaching normative consensus. For the state to actively promote public acceptance of existing civil rights laws is one matter; for it to provide subventions for private groups to promote constitutional amendments such as the Equal Rights Amendment is quite another.[18]

Some Relevant Legal Principles

Numerous statutes, federal regulations, and legal opinions already restrict lobbying with federally appropriated funds. However, these statutes have rarely been enforced and, through desuetude, they have lost considerable force on the conduct of recipients of federal grants and contracts. To the extent to which

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"Government is Top Advertiser in Canada, Angering Its Critics," *Wall Street Journal*, March 4, 1982, p. 31.

[17] Montesquieu, *The Spirit of the Laws*, Book 4, Chapter 5, "Of Education in a Republican Government" (Edinburgh: A. Donaldson, 1768).

[18] State and local agencies have spent public funds to promote passage of the Equal Rights Amendment. See, *Mulqueeny v. National Commission on the Observance of Int'l Women's Year*, 549 F.2d 1115 (7th Cir. 1977) (dismissed for lack of standing). In other situations, state funds have been used by California's Department of Parks and Recreation for writing, printing and distributing materials supporting a state bond issue. *See, Stanson v. Mott*, 551 F.2d 1 (D.Col. 1976). The Denver School Board has used public funds and provided school telephone lines seeking to defeat a proposed amendment to the Colorado State Constitution limiting the spending power of public bodies. *See, Mountain States Legal Foundation v. Denver School District*, 459 F.Supp. 357 (D. Colo. 1978).

the OMB revisions limit lobbying, as opposed to other forms of political advocacy, the regulations merely restate existing law. Enforcement of these laws by the Justice Department and by agencies that dispense grants and contracts would go far to meet those concerns that gave rise to the OMB proposal.

The most direct prohibition on the use of federally appropriated funds to lobby Congress is 18 USC 1913, which makes it a criminal act for federal officials to spend appropriated funds to encourage grassroots lobbying.[19] Communications to Congress through "proper official channels are exempted." Indeed, case law has encouraged such "executive lobbying" on the view that sound administration requires that executive agencies be able "to express views to Congress, to make suggestions, to request needed legislation, to draft proposed bills or amendments, and so on."[20] Thus, the practice of executive lobbying has been institutionalized in the congressional liaison offices of federal agencies.

Many specific statutes forbid lobbying by the recipients of grants and contracts. As but one example, a 1979 rider to the then Health, Education, and Welfare appropriations bill effectively precluded the payment of expenses incurred by grantees for any activity designed to influence legislation pending before Congress.[21] Many claim that this rider has been systematically violated with impunity by grantees, and indeed, the Community Services Agency in its own interpretation of the rider sought to severely narrow its reach.[22]

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[19] The text to 18 USC §1913 reads: "No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to members of Congress, on the request of any member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business."
"Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined no more than $500 or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment."

[20] Hearings before the House Select Committee on Lobbying Activities, *Legislative Activities of Executive Agents*; 81st Congress, 2nd Sess. at 2 (1950), see also *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968); *Wong Yang Sung v. McGrath*, 339 U.S. 33, 47 (1950).

[21] The rider derives from a provision that first appeared in the FY 1979 appropriation for the Departments of Labor, Health, Education and Welfare, and related Agencies. See Pub.L. No. 95-480, S 407, 92 Stat. 1589. The provision has since been carried forward in successive public laws and resolutions applicable to those agencies. *See, e.g.*, Pub.L. No. 96-536 (H.J. Res. 644) 94 Stat.

Claims that the proposed regulations are unconstitutional in that they censor free speech[23] are ill-founded. The Administration merely intends to end taxpayer subsidy of political speech. Recipients of grants and contracts would remain free to engage in political advocacy on any side of an issue should they choose to bear the expense—like anyone else.

From the constitutional perspective, the only open question is whether the federal government may prohibit advocacy by an employee if any portion of an employee's salary is financed by federal grants. The question raised is whether the threat that the government would deny a grant would "chill" political expression during time not paid for by federal grants. The argument tracks the "unconstitutional conditions" doctrine, contending that "even though a person has no 'right' to a valuable government benefit, and even though the government may deny him the benefit for any number of reasons," it may not deny him the benefit "on a basis that infringes on his constitutionally protected interests—especially his interest in freedom of speech."[24] The idea is that denying grantees reimbursement for the cost of nonpolitical activities when their lobbying activities are paid for entirely with private funds is a disproportionately broad reduction of free speech rights to meet legitimate government interests.

The Hatch Act addresses this question directly, stating that "no officer or employee in the executive branch of the federal government, or any agency or department thereof, should take any ac-

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3166 as amended by Act of June 5, 1981 (H.R. 2512), 127 Cong. Rec. S5796-S5807. The language of the rider is as follows: "No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress itself. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient or agent acting for such recipient to engage in any activity designed to influence legislation or appropriations pending before the Congress."

In its present form, the rider applies by its terms to all appropriations made or continued by the relevant Act, including appropriations for the Departments of Labor, Health and Human Services, Education, and the Community Services Administration, among others.

[22] U.S. Department of Justice, Office of Legal Counsel, Memorandum Re: Anti-Lobbying Restrictions Applicable to Community Services, June 17, 1981.

[23] "Regulatory Report—Lobbyists Unite to Lobby Against OMB's Proposed Curbs on Lobbying," *National Journal*, February 19, 1983, p. 371.

[24] *Perry v. Sinderman*, 408 U.S. 593, 597 (1972).

tive part in political management or in political campaigns." The restriction has been extended to an "officer or employee of any state or local agency whose principal employment is in connection with any activity which is financed in whole or in part"[25] by federal grants. Under the Hatch Act the federal government can require, as a condition of employment, that employees not engage in political advocacy both during and after work hours. In this regard, the significant difference between the Hatch Act and the OMB regulations is that the regulations reach private sector employees paid under federal grants and contracts in addition to full-time federal, state, and local employees. It is doubtful whether that distinction reaches constitutional dimensions.

In contrast, government subsidy of partisan advocacy raises its own First Amendment problems. Why should taxpayers underwrite lobbying for ideological causes or values of which they disapprove? Recent court cases clearly pose the issue. For instance, in *Galda v. Bloustein*,[26] a lawsuit involving Rutgers University, a U.S. Court of Appeals invalidated a "negative checkoff" contribution to the Ralph Nader-sponsored Public Interest Research Group that had been levied on state university students. The student association had required all students to contribute to the Rutgers PIRG as part of an activity fee. Those not wishing to contribute personally had to request a refund. The Court ruled that the state could not compel students, finding that a person is not required "to contribute the support of an ideological cause he may oppose." The case expanded on an earlier Supreme Court ruling that a state could not require public schoolteachers to pay that portion of their union dues that would be used for partisan political purposes. The OMB regulations extend the principle that taxpayers cannot be forced to subsidize political advocacy to recipients of all federal grants and contracts.[27]

Further, the use of federal funds to promote private political agendas injures the free functioning of the electoral process. Allowing private persons to use government money to disseminate propaganda in favor of any cause or candidate gives the appearance of an official imprimatur for particular ideological viewpoints, opening the dike to government manipulation of public opinion. Such activity cannot be defended if the state directly pays for advocacy, and its propriety is at best problematic if the state supports the bulk of a grantee's service activities. Government responsibility for the use of government money does not end when funds are drawn down from the Treasury to pay a grant or contract.

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[25] This extension has been upheld in *Oklahoma v. Civil Service*, 330 U.S. 127, 132 (1947).

[26] *Galda v. Bloustein*, 686 F.2d. 159 (3rd Cir. 1982).

[27] Some commentators have suggested that OMB lacks statutory authority to issue such regulations. Although I believe this position to be incorrect I do not deal with it here.

Indeed, significant fairness, if not first amendment, problems exist with government-sponsored advocacy: The government should not take sides between political factions by subsidizing some and ignoring others. When this occurs, the government discriminates between political opinions, placing a monetary imprimatur on those groups whose politics it favors and withdrawing such approval from others. Such patronage discrimination on political grounds has long been a hallmark of government subsidy of political advocacy. This is dangerous stuff not only on free speech grounds. Clear fairness problems are raised as well. Except insofar as it may be necessary to execute its public purposes, the state may not, under classical theory, discriminate between factions. Neutrality is a command of fairness, and unless we propose to provide government funding to promote every ragtag political opinion (a proposition unworkable in both theory and practice), a studious neutrality is required.

Obviously the government has the right—if not the duty—to disseminate its views on matters of public policy, whether such views are controversial[28] or not. Often government must lead the citizenry, coalescing the popular will. The problem is where to draw the line. Delegating policy advocacy to private groups through the grant-making process, however, does not reach the hard issue—when can the state stand up for positions it believes that the polity ought to adopt? Delegation leaves the decision of which policy position to adopt to the grantees themselves, thus compounding the fairness problem. Indeed, the delegation of advocacy to private groups precludes advocacy groups from claiming the one justification for advocacy that might legitimate government subsidy—a legislative determination to engage in such advocacy. Lacking the imprimatur of democratic consent, government subsidy of private advocacy can be seen for what it is—the public patronage of selected political beliefs. That these advocacy subsidies are rarely made openly but are often disguised through grants and contracts for legitimate public functions merely underscores the dangers inherent in a system of expansive government subsidy.

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[28] *Joyner v. Whiting* 477 F.2d 456, 461 (4th Cir. 1973) (government "may spend money to publish the positions they take on controversial subjects"); *see also*, *Arrington v. Taylor*, 380 F.Supp. 1348, 1364 (M.D.N.C. 1974), GAO Opinion B130981-014. (September 10, 1976).

Approaches to Implementing the Classical Model

Though a substantial consensus may exist behind the neutrality principle, implementing that principle in the federal grant and contract process is extraordinarily difficult. The proposed solutions are constantly attacked as both over and under inclusive. The three general approaches that have been proposed to implement the neutrality principle, the trigger approach, the allocation approach, and the taint approach, each attacks the problem from a different perspective. The "first" and "second" OMB drafts reflect and draw upon these different approaches.

The Trigger Approach

The trigger approach would allow the recipient of a federal grant or contract to engage in a specified *de minimis* amount of lobbying with private (or, in some instances, public) funds before any restrictions would apply. The Tax Reform Act of 1976[29] takes this position, providing a formula under which tax-exempt organizations can spend a certain percentage of their operating expenses on lobbying and still maintain their tax-exempt status. That figure, called the lobbying non-taxable amount, is determined on a sliding scale, ranging from 20 percent of the first $500,000 in exempt purpose expenditures to 5 percent of expenditures over $1.5 million—not to exceed a total of $1 million.[30]

The value of a trigger formula is that it insulates subsidy restrictions from those hard cases that create both administrative nightmares and inequitable applications. The use of a trigger formula recognizes the need for some *de minimis* exception so that employees who lobby only one day a year are not precluded from reimbursement and so that federal funds are not withdrawn because a Xerox machine is used for occasional political activity. By allowing 5 percent of office space to be used for political advocacy without precluding government reimbursement for the remainder of the rent, the OMB first draft implicitly accepted (if only in part) the value of the trigger analysis in regulating subsidies for political advocacy.[31] The November OMB proposals take a narrower approach. While they preclude the use of any federal funds for lobbying purposes the November draft uses a 25 percent trigger before requiring employees to provide extensive paperwork and documentation of their lobbying activities. It must be underscored, however, that the November OMB trigger goes to paperwork requirements. It does not treat the practical problem of precluding *de minimus* lobbying from any reimbursement claim. Both drafts, however, clearly reject the trigger approach as insufficiently principled. The first draft chose instead a variant of the taint approach while the November draft opted for the overarching perspective of the allocation approach.

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[29] Pub.L. No. 94-455, 90 Stat. 1814 (1976).

[30] For grassroots lobbying the total is 25 percent of the organization's lobbying non-taxable amount. *See* 26 U.S.C. §4911(c)(4)(1983); *See* generally, *Tax Reform Act of 1976*.

[31] Similarly, the proposed OMB regulations requirement that a trade organization not spend more than $100,000 a year "in connection with political advocacy" before grant or contract preclusion recognizes the need for a trigger formula. 48 Fed.Reg., at p. 3350.

The Taint Approach

Recognition that the wall of separation between lobbying and nonlobbying activity is often porous has led many conservatives to urge use of a taint approach, arguing that an organization that engages in any advocacy whatsoever should be barred from receiving government funds. Responding to this concern, the OMB's first draft determined that federal funds should not be used to pay the salary of any lobbyist or finance any capital equipment used for political advocacy—even when the advocacy is paid with private monies. This argument is based on the argument that service functions ineluctably take on an advocacy coloration when undertaken by an advocacy organization. For example, the National Organization for Women and the Environmental Defense Fund, both perceived as advocacy organizations, would find it difficult to run programs in home economics or deforestation without injecting their particular political beliefs into the program. In contrast, should the Boy Scouts or the Red Cross engage in a small amount of advocacy, neither actual separation nor perceptual problems are likely. Once one recognizes that groups that engage in substantial amounts of advocacy have structural conflicts of interest in providing service, the problem, if not the solution, is clearer.[32]

The taint approach alone, however, creates its own problems. Grant and contract recipients' operational flexibility is limited. A strict wall of separation would mean hiring new employees for lobbying even if for only one or two days a year. Similarly, duplicative capital equipment would have to be purchased.

The Allocation Approach

Under the allocation approach a group would distinguish between its lobbying and its nonlobbying activities and charge only the latter against government grants and contracts. From the theoretical perspective of the classical model, the virtue of an allocation approach is clear: Government grants do not pay for advocacy, and what a person does on his own time is his own business. The percentage of employee time used for advocacy cannot be charged against a federal grant. Similarly, the capital overhead and operating expenses of capital equipment, such as computers and photocopiers, would be allocated between advocacy and nonadvocacy efforts.[33]

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[32] Indeed, in the world of scholarship, we often distinguish between advocacy scholarship and academic scholarship, recognizing that the latter is usually more scrupulous in its use of sources and in its interpretation of texts.

The allocation approach has its own problems, however. Groups can allocate overhead expenses between advocacy and nonadvocacy activities to maximize their federal subsidies. It is difficult to ensure that accurate time records are kept and the proportion of time used in advocacy must often be approximated. Bookkeeping problems can prove enormous. The complex enforcement problems may well suggest why the OMB first shied away from the allocation approach.

Indeed, there is an artificial element in the attempt to allocate between advocacy and nonadvocacy work time. Employees find it difficult to separate work assignments. A manager of a defense plant, for instance, cannot drop his occupational role whenever he lobbies Congress. Nor can a priest easily jettison his spiritual role when he lobbies on federal nuclear policy. When lobbying efforts are more than *de minimis*, it is difficult for such persons to disentangle advocacy from other activities. Many commentators, therefore, believe that the inability to disentangle advocacy from service functions make the allocation approach conceptually unsound.

In many instances, for example, the use of federal grant or contract money by the private sector for advocacy may imply governmental support or authorization. In such circumstances, the public sector participation in private lobbying can be so pervasive that the government will, of necessity, be identified with lobbying efforts. Thus, when a joint DOE/industry research project used private funds to publish material promoting the nuclear industry, the Comptroller General required that a disclaimer of government approval be permanently displayed. The rationale: The public will tend to identify this information with the government and view it as bearing the government's seal of approval.[34]

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[33] In theory capital equipment purchased on a federal grant, such as a duplicating machine, could not be used years later for advocacy purposes without a "re-capture" provision. The auditing problems would be a nightmare. I am grateful to Roger Pilon for this and other insights.

[34] See the Report of the Comptroller General, *Problems With Publications Related to the Clinch River Breeder Reactor Project*, Rep. No. B-130961 at p. 2 (January 6, 1978). The Comptroller went on succinctly to make the fairness argument finding that the Department of Energy "should exercise some responsibility. . . for seeing to it that the public and its elected officials receive balanced and objective information."

The problem is not merely one of public perception. Advocacy organizations are infused with the spirit of the cause they endorse — as they should be. It is naturally difficult for such groups to disentangle themselves from advocacy when providing service. Service actually provided by an advocacy group like People United to Serve Humanity will naturally be infused with an ideological perspective. But when the distance between service and advocacy disappears, the service function becomes inextricably tainted.

Some Implementation Problems

While the November draft has clearly reduced the implementation problems faced by recipients, there can be little doubt that the proposed regulations will cause dislocations for many businesses and non-profits. But can those dislocations be minimized without diluting the regulations' purpose? Many complaints can be resolved through accounting procedures that separate advocacy from business activity. Implementation problems concerning cost-plus defense contracts and standard procurement contracts, however, might require slightly amended regulations for the Department of Defense, the National Aeronautics and Space Administration, and the General Services Administration. But there can be no principled rationale by which employees who administer a corporate political action committee should have their salaries charged against the government. Nor should trade association dues be used to pay for lobbying that a corporation could not engage in under a federal grant or contract.

Intelligent partisan advocacy regulations must distinguish between the different kinds of contractual relationships between government and business. These relationships fall in a continuum. At one end are business suppliers who sell to the government fungible commodities, such as potatoes or pencils, at rates set by competitive bid. The government is only one of a large number of buyers, and in such a case, it is correct to say that the product is not priced specifically for government procurement. Thus, if the vendor wants to include lobbying expenses in his bid, that is his own business. A competing vendor could exclude such expenses from his bid thereby underbidding the first vendor. The market, then, would take care of the entire problem. The government would take the lowest bid for an item, and the successful vendor could use the proceeds for plant expansion or political lobbying, as he wishes.

This model works only where there is a free market in operation. It fails to reflect those cases at the other end of the continuum, when the government is the sole purchaser of a commodity (tanks, for example), or when a single vendor is the sole supplier (sophisticated computer software, for instance). Whether the government uses a cost-plus or a fixed-fee contract, the tank is being priced specifically for government purchase. In that situation, if the government pays for lobbying, it is directly supporting political advocacy.

Indeed, government accounting principles may go too far by disallowing from reimbursement all advertising or product marketing costs. Any disallowance of advertising costs should distinguish between the cost of attracting customers and the cost of selling ideas or products. Marketing should not be counted as advocacy, even when it is an effort to sell products to government agencies or employees.

Few would argue that the state should pay for private groups to directly lobby legislators and government officials. The concern that government not aid a particular side in an election campaign "through contributions, endorsements, publicity, or similar activity" ruffles the feathers of none but the self-interested. Much of the work of the Federal Election Commission, after all, is devoted to ensuring that government funding of national campaigns does not degenerate into government manipulation of election results. Indeed, it is to this concern that the Hatch Act speaks.

Where the consensus unravels is in the proper treatment of grassroots advocacy, and it is here that OMB's first draft grasped both the political and the constitutional nettles. In denominating any attempts "to influence government decisions through an effort to affect the opinions of the general public or any segment thereof" as political advocacy, the OMB first draft moved against the most politically troublesome political activity by subsidized nonprofits—the use of tax money to stir up populist opposition to Congress and Congressmen. Such "grassroots" advocacy efforts border on the organizing of political constituencies. They reflect the underlying tactical reason why so many conservatives wish to "defund" the left.

Simultaneously, the restriction on grass-roots lobbying strikes perilously close to restricting the promulgation of information and ideas—enterprises that government should be loath to regulate. Ideas, of course, have consequences, as do empirical data. Drawing a line between the promulgation of ideas designed to contribute to public debate and those designed "to influence governmental decisions"[35] is exceedingly difficult. Indeed, the OMB first draft recognized this problem by excluding from its definition of advocacy the dissemination of "the results of non-partisan analysis, study or research,"[36] the distribution of which is not primarily designed to influence the outcome of any election or governmental decision. Intent in this context becomes a gossamer thread, dependent upon subjective as well as objective judgments.

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[35] 48 Fed. Reg., at 3350 (1983).

[36] *Ibid.*

Recognizing these dangers, the OMB November draft attempts to avoid this problem by restricting its grassroots lobbying prohibition to the preparation, distribution or use of publicity or propaganda to influence legislation, thus limiting the restriction to efforts to affect public action not public opinion. As the November draft eschews any effort to restrict participation in the war of ideas, some of the most problematic portions of the first draft are effaced.

Some commentators have urged that government restriction of advocacy subsidies be limited to tax-exempt non-profits. Tax-exempt non-profits, they argue should be given the choice of refraining from advocacy or losing their tax-exempt status. The Internal Revenue Service, however, does not agree that this Hobson's choice is necessary. In many respects, the level of lobbying allowed under the Revenue Act is far more generous to businesses and non-profit groups than the November OMB draft. Deductions are allowed for both grassroots lobbying[37] and direct lobbying, although the limits on grassroots expenditures are more stringent. The conceptual problem is whether the same rules that apply to deductibility of business expenses (under section 162 of the Internal Revenue Code) should apply to government cost payments through grants or contracts. Although tax deductions, like grants or contracts, are an indirect form of subsidy, the issues involved in reform of the tax code are markedly different.

Conclusion

While the taint approach used in the OMB first draft was conceptually satisfying in that it precluded any commingling of advocacy and service activity, the shift to an allocation approach was necessary for the second draft to receive serious political consideration. Any allocation methodology, however, must develop strict accounting procedures to ensure that partisan advocacy is not paid for by direct subsidy nor absorbed by overhead claims. The certification process is designed to assist in ensuring such compliance.

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[37] Grassroots lobbying is defined as attempting to influence legislation through appeals to the general public or any segment thereof. Direct lobbying encompasses direct communication with "any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of legislation." for the IRS definition see, 26 USC §4911(d)(1)(A) and (B); 26 USC §170; 26 USC 501(c)(3) and (h).

Any allocation approach must be coupled with some trigger mechanism in order to remove any possibility that such regulations would become an administrative nightmare for non-profits and businesses. The November OMB draft uses a 25 percent trigger before requiring employees to provide extensive paperwork and documentation of their lobbying activities would halt the "parade of horribles" exhibited by the opponents of OMB's regulatory scheme. While this common sense approach would not ensure complete government neutrality in the political arena, it would go far toward reducing the ill-effects of government subsidy. The virtues of the classical model ought not to be so easily abjured.

This said, however, we must recognize that any practical solution to the issues of principle raised by government subsidy of partisan advocacy is a second-best response. In a perfect world, advocacy would be merely incidental to the services that government purchases. If advocacy is more than incidental, government ought not get involved. And if even strict allocation techniques fail to disentangle advocacy from service, government ought to withdraw.

It must be stressed that the advocacy problem cannot be effaced by the suggestion that government grants or contracts to private groups differ from advocacy by the state as the private recipient "launders" the government subsidy transforming it into private advocacy. True, National Endowment for the Humanities grants to novelists or poets need not imply government approval of their creative work product. Such legerdemain will not hold, however, for the subsidy of political speech.

The fundamental problem with all government speech cases is the same: Can government subsidized speech be reconciled with the demands of fairness without proffering that speech to all and sundry? In lawyer's talk, the question posed is whether the government funded enterprise takes on characteristics of a "public forum." If so, selectivity in the realm of ideas borders dangerously on government censorship. One solution to this fairness problem is to adopt a strategy of indiscriminate support for advocacy efforts. Indeed, in the paradigm "free speech" example of persons seeking to hold a rally in Lincoln Park this solution would be constitutionally required. In contrast, OMB has chosen to implement fairness by recourse to a studied neutrality in the realm of political ideas, forbidding subsidy to any advocacy efforts.

Neutrality, of course, need not suggest conformity. Even under the OMB regulations, a "thousand flowers" can flourish in the democratic state. Such advocacy efforts would be strengthened by their independence. Weaned from the crutch of government subsidy they would prosper to the extent to which set down roots within the body politic. Under the classical model, then, the state will not pay for the nurturing of advocates in political wars. Whether this strategy will successfully avoid the twin sirens of intellectual selectivity and ideological profligacy remains to be seen.

Senator DENTON. I would like to call on our first witness, my friend and truly distinguished colleague from Idaho, Senator Steven D. Symms. He has been a valuable ally on S. 1405, having the same concerns about taxpayer subsidy of partisan advocacy as we have.

Senator Symms, I welcome you to this hearing and to any other you care to testify with me. You have shown me the way on many issues, and I need hardly remind you that without objection your complete written statement will be made part of the record.

And because of your time constraints, you may wish to summarize your written testimony.

STATEMENT OF HON. STEVEN D. SYMMS, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator SYMMS. Thank you very much, Mr. Chairman. I wish to compliment you for your leadership on the Federal Neutrality Act, S. 1405. I am very proud to be a cosponsor of what I consider to be a very important piece of legislation.

I certainly wish to publicly thank you for taking the lead in this important committee in initiating review of some of these matters that have often been swept aside and not been discussed. I might add that it is high time that some legislation like S. 1405 pass the Senate and the House and be signed into law by the President.

If S. 1405 is adopted, it will ensure that Federal tax dollars are not used for the purpose of political advocacy by organizations to which the Government has granted tax-exempt status. The real issue at stake here is one of Government impartiality and basically of fairness.

Tremendous amounts of Federal money are currently being disbursed to nonprofit organizations which then use these revenues to advance various political interests. As a taxpayer, I consider this an intolerable situation. As a Member of the Congress, I do not support public financing of my reelection efforts nor do I believe that taxpayers should be forced to pay for the political campaigning of any tax-exempt organizations.

Thomas Jefferson, one of the most outstanding thinkers in the history of this great Republic of ours, certainly one of the real idea men among the Founding Fathers, said and I quote: "To compel a man to furnish funds for the propagation of ideas he disbelieves and abhors is sinful and tyrannical." The Founding Fathers wisely recognized the danger of Federal support of political advocacy.

Historically, Congress has sought to ensure that the Federal Government remain impartial in its dealings with the public sector. That respect for impartiality was reflected in the passage of the

Hatch Act, which limits political activities of Federal employees. There is also a provision in the Federal Criminal Code that imposes criminal penalties on Federal employees who engage in lobbying.

Mr. Chairman, there are many examples of other laws intended to restrict grant recipients from lobbying Congress toward the passage of legislation. Too often these laws are flagrantly ignored, or unenforced. The Federal Neutrality Act would define political advocacy, allowing for public scrutiny of the records of these organizations necessary to determine whether abuses are occurring, and would establish firm penalties for violations.

It is obvious that prohibitions currently in the law are inadequate. It is increasingly apparent that many politically active groups in this country have been successfully soliciting Federal money to advance their political agendas or special interests. Undoubtedly, if they can accomplish it, it is easier to seek money through the Federal system than through private sources. Nevertheless, expending Federal dollars for political advocacy creates a mistaken impression that the government endorses a particular political viewpoint.

If the Government pays an organization to advance a political issue, the Government then becomes a force for political change. For anyone concerned about individual liberty, the neutrality of the state in political issues is of paramount concern. To forsake neutrality would be to open the floodgates for government manipulation of public attitudes and perceptions.

Another point, Mr. Chairman, that I think should be mentioned is the temptation for Government employees to dispense funds to recipient organizations in exchange for past or future political support. This backscratching has no place in a free society.

Not only does this conduct promote a spoils system, it also results in a type of double dipping. And I might point out that Congressmen Vin Weber of Minnesota and Steve Gunderson of Wisconsin, have testified that anti-Reagan lobbying, which was funded by the Community Services Agency, was directed at influencing votes. Mass mail campaigns and anti-Reagan brochures were subsidized with congressionally appropriated money, and the CSA inspector general and General Accounting Office confirmed these reports. The irony of this situation is that the 501(c) category was created to give favorable tax treatment to those public organizations, charities, fraternities, and so forth, that are supposedly apolitical in nature and would serve the general public and not a narrow political interest.

Mr. Chairman, I believe that this issue is one which transcends party politics. Even the Washington Post, a newspaper which rarely shares my political opinions, has acknowledged, and I quote: "* * * grant recipients are quite free to express their views in any way they see fit—as long as they do it on their own time and with their own money."

The public patronage of selected political beliefs is contrary to the fundamental premises on which our Republic was founded. It is absolutely in opposition to the free competition of ideas, the very essence of democratic government. As a taxpayer, I resent the use of tax dollars to promote political causes whether they emanate from the right or from the left of the political spectrum. I hope that the majority of the Congress shares this view and will lend their support to the enactment of S. 1405.

Mr. Chairman, that completes my written statement. I will be happy to answer any questions that the chairman might have.

Senator DENTON. Well, thank you, Senator Symms. Normally it is a Senator's prerogative to depart because of his time constraints. However, I understand that you would not object to answering two questions this morning.

Senator SYMMS. No, I can take a couple of minutes. I do have a hearing in the Environment and Public Works Committee that I need to attend, but I can take a few minutes here, if the chairman has any questions.

Senator DENTON. Thank you, Senator. Some critics of this legislation have claimed that it somehow would be restrictive of their right to first amendment privileges of free speech.

Would you care to comment on that allegation?

Senator SYMMS. Well, Mr. Chairman, this is one of the things that has drawn me to become interested in and supportive of your legislation. Last September I received some criticism for inquiring about the propriety of a grant which was funded in Idaho. The grant paid for an event—the title of which was "Russian Awareness Week." All of the speakers that participated in the event were obviously from the liberal side of the political spectrum. This program in Boise, which was advertised as a promotion of Russian awareness, just coincidentally occurred about a week or two after the disastrous shooting down of KAL-7. I said at the time that I didn't mind anyone having a symposium on Russian awareness. When the taxpayers have to pay for a program that is designed to demonstrate that the United States has been the culprit in international affairs, and that the Russians are the people in white hats, I will oppose it. I was accused by one editorial of a being a foe of free speech. Nothing could be further from the truth. This accusation was undoubtedly provoked by my statement that the shooting down of KAL-7 probably created more Russian awareness in America than any of the programs that had been sponsored during Russian Awareness Week. I believe that these types of grants are a violation of the freedom of the taxpayer. We are not trying, through this legislation to interfere with first amendment privileges in any way. Neither you nor I would support anything that undermined free speech.

But I do think that the issue here is the freedom of the taxpayer not to be forced to support political activities with which they do not agree.

Very rarely do Government grants promote anything relating to freedom, private ownership, or the virtues of capitalism. I have been looking for examples to show that there is an inequality on both sides, that liberal people should be against these abuses as well as conservatives. I have to confess to the chairman that I found it very difficult to find examples where a grant has been used to promote a conservative point of view. As a matter of fact, a supporter and a friend of mine in Idaho is very interested in a pro-private ownership, private land group that was formerly at the University of Montana. This group was trying to procure a grant from the Interior Department last year. As a tax-free foundation, they promote private ownership, and environmentalism through privatization of some of the Government lands in the West. They were unable to get a grant through an Interior Department that is now under a conservative administration. The Interior Department could not justify the granting of taxpayer dollars to be used to promote ideas of private ownership, believing that somehow that was not a proper use of a grant. It is shocking to me that the U.S. taxpayers subsidize the National Council of Churches, the United Friends Group, and others who have actually called on me in my office to promote unilateral disarmament of the United States, unilateral American withdrawal from Central America and allowing the Soviet-Cuban axis to take over in Central America.

There is no violation of free speech in this legislation, but there certainly is a violation taking place today of freedom of the taxpayers who are forced to pay for things that promote what most of us would consider to be poor government policies for this country.

Senator DENTON. Thank you very much, Senator Symms. In view of your time schedule and the hour, we will submit the other question for the record, and I want to thank you very much for your testimony this morning.

Senator SYMMS. Thank you very much, Mr. Chairman. It's my privilege to be here, and to be a sponsor with you. I compliment you again.

Additionally, I would ask unanimous consent to submit to the record some examples that I brought with me this morning of what I think are clear abuses of Federal tax and dollars in this country.

Senator DENTON. Without objection, they shall be entered into the record.

[The following material was submitted for the record:]

Your Taxes at Work to Promote Marxist Objectives

INSIDE BUREAUCRACY

By Howard Phillips
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In its 1979 Annual Report, the Youth Project graciously acknowledged the support of the U.S. Treasury for its "invaluable support and assistance for our work." The U.S. Treasury, in turn, continued to fund the Youth Project, just as graciously shelling out about $366,000 in 1981.

The Youth Project was expressing its gratitude for grants by the National Institute of Mental Health (HHS) and by the Department of Education totalling almost $60,000. The 1981 funding came from ACTION-VISTA and was a holdover commitment by the Carter Administration while that agency was led by former anti-war activist Sam Brown. The NIMH and Education grants now appear to have lapsed without renewal or substitute funding — although federal grants data are too massive and complex to rule out the possibility that another secret of NIMH is somewhere afoot. Tom Pauken, the new ACTION Director, has meanwhile moved forcefully to eliminate VISTA as a nursery for political activism — a course which brought blistering media attacks on him (see Jack Anderson's column of December 18, 1981 and page A-11 of the December 28, 1982 issue of the *Washington Post).* It is clear that career activists in the Youth Project and similar organizations will not relinquish the U.S. Treasury's support without a fight, and that they have many sympathizers with their aims in the national media and in the Congress.

Just what are the Youth Project's aims? Incredibly, this recipient of taxpayer subsidies and media sympathy is an umbrella for socialist organizations that promote the destruction of free enterprise and reflexively parrot the Marxist line on international relations. One would expect out of this a tremor comparable to what everyone would feel if Yuri Andropov decided to fund the Heritage Foundation. Strangely, the seismic needles never budged as, year after year, the U.S. Treasury extended its invaluable support and assistance.

Beneath the Youth Project umbrella:

- the Political Rights Defense Fund pushed a lawsuit against "FBI and CIA harassment of young American citizens";
- the Militarism and Disarmament Project of the Institute for Policy Studies analyzes "the role of U.S. military expenditures to repressive dictatorships";
- the Center for Cuban Studies provides a "forum" for examining the "social, political and economic changes taking place in Cuban society" (no mention in this connection of repressive dictatorship);
- the Center for the Biology of Natural Systems investigates "the U.S. industrial production system," which is based on "basic misuses of natural and human resources";
- the Midwest Academy trains activists for "citizen action for social and economic justice"; and
- the Institute for Policy Studies (again) is developing a "model for decentralized economic planning in the United States."

The IPS is a Washington-based Marxist think-tank with offices in London and Amsterdam. The London Institute for the Study of Conflict has called it a front for Soviet activities which would be resisted if they were to "originate openly from the K.G.B." It is funded primarily by the Samuel Rubin Foundation (also listed as a Youth Project benefactor), which has financial connections with the Cuban central intelligence agency (*Direccion General de Inteligencia*), which also has connections with the Center for Cuban Studies. Peter Weiss, chairman of the Rubin Foundation, is active with the National Lawyers Guild, formed in the 1930's with Comintern help.

In These Times (ITT), which calls itself the "leading newspaper of independent American leftists," has written of the U.S. political system that "it presents us only with choices between obnoxious or no longer credible alternatives." It recognizes a need to elect "legislators committed to the social goals of the left." It expects socialist movements to "force a basic realignment of American politics by converging in a major party oriented towards socialism."

The Youth Project is an enthusiastic supporter of ITT's agenda. On ITT's fifth anniversary, the Midwest Academy, the Citizen/Labor Energy Coalition (an IPS affiliate), and Miles Rapoport (1979 chairman of the Youth Project) all sent hearty congratulations. They were joined in the felicitations by the Kirsch Center for Marxist Studies; the National Network in Solidarity with the Nicaraguan People; Carol, Jim, Paul and Peter (from one of Ralph Nader's Public Interest Research Groups) who in the best PIRG tradition exhorted ITT to "Keep slugging — putting 'slugs' into Ronnie"; and by Doyle Nieman, a former managing editor of ITT who joined the Youth Project in 1979.

In the totalitarian system to the leadership of which he has fallen heir, Yuri Andropov might be able to get away with it if he perversely decided to fund the enemies of his system. In our system, there are still effective channels for the expression of private outrage at public foolishness. Alert citizens can, at election time, help focus attention on a congressman's sympathy for the Youth Project, if that is the fact. The present Administration can be pressured to ensure that not a single additional tax dollar is given to groups whose fondest wish must be the speedy removal of this Administration from office. Media personalities who attack public officials trying to correct this scandalous perversion of public mores can be told how floridly unacceptable their biases are.

Perhaps most important, citizens can lend moral and financial support to those groups fighting against the Left's systematic raiding of the public treasury. It is only through the concerted effort of such groups that the Left's struggle to preserve its federal funding will be exposed for what it is: A desperate lack of faith in the intellectual and moral appeal of its political agenda.

Your Taxes and A Touch Of Gray

INSIDE BUREAUCRACY

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"We have the sun and the wind and the people on our side," claims Maggie Kuhn, the seventy-six year-old leader and founder of the Gray Panthers, a politically active, liberal group of senior citizens. What she doesn't mention is the more than $120,000 in Federal funds her organization has received since 1979—funding which has extended into the Reagan Administration. Federal grants to the Gray Panthers include these:

★ $61,491 from September, 1979 to February, 1980 from the Administration on Aging for a "Training conference for volunteers."

★ $29,992 from November, 1980 to October,1981 from the Administration on Aging for "Media conference in conjunction with White House Conference on Aging."

★$30,000 from December, 1980 to November, 1981 from the Environmental Protection Agency.

The Gray Panthers have also been assigned Federally compensated VISTA "volunteers":

★ four volunteers from November, 1980 to October, 1981 from VISTA "To organize, guide, train and motivate seniors to become members of the Gray Panther Network in Nevada."

★ five volunteers from July, 1980 to July, 1981 from VISTA to "Develop a Gray Panthers network in Iowa with members trained in community organizing."

The taxpayer-subsidized Gray Panthers marched in the 1981 Solidarity Day budget-cut protest, have circulated petitions "demanding that Reagan turn his priorities around," protested U.S. aid to El Salvador, and opposed defense spending in general.

"The Reagan Administration provides all of us with a whole new agenda of outrage," Kuhn said in her speech to the September, 1981 Ralph Nader "Taking Charge" conference in Washington. Criticizing senior citizen Ronald Reagan for cutting back on bureaucratically subsidized social science research and staff lawyers, Kuhn concluded, "Together, this represents a basic anti-American strategy calculated and initiated by the Reagan Administration to do us all in."

In April, 1981, the group planned a trip to study the Cuban way of doing things. *Gray Panther Network* explained that "In Cuba, the word for 'retiree' is 'jubilado,' literally 'jubilated.' Though Cuban jubilados often confront the loneliness and boredom forced on many of the aged here, their retirement is not mandatory and thus, many opt for a still productive lifestyle after the age of sixty-five." According to a Kuhn aide helping to organize the trip, "Too many people have a distorted view of life in Cuba and it must be our duty to provide a different perspective."

Panther Ron Wyden had enough gray behind him in 1980 to upset the Third Oregon District incumbent (veteran Rep. Robert Duncan) in the Democratic primary and then to become the first member of his organization to serve in the U.S. House of Representatives. "It is true that Mr. Duncan took his victory for granted," Wyden told *Gray Panther Network*. "I just don't think he realized what strong political muscles seniors have."

Even *The Washington Post* knows this group's business is politics. "Yesterday was a typically busy day for her," it said of Kuhn. "Several meetings concerned with problems of the elderly, picketing in front of the White House, an interview, a press conference."

"It's tough hardball we're playing out there, but we've got to keep it up," Kuhn resolved.

Gray Panthers in Minnesota have designed a new political strategy called "phonathon," whereby volunteers call the offices of Minnesota senators every fifteen minutes during business days urging them to stop any buildup of U.S. defenses.

President Reagan can stop the subsidies to the Gray Panthers and other Leftist pressure groups. But to do so, he must overrule his OMB Director, David Stockman, who has said that activist organizations ought not to be disqualified from the receipt of Federal funding.

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Bilingual Group Uses Federal Funds to Radicalize Immigrants

INSIDE BUREAUCRACY

By Howard Phillips
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Research, Analysis & Education
Foundation

Of all the absurb projects the American taxpayers are subsidizing, teaching Spanish to Spanish-speaking children ranks very near the top. But this pet program of bilingual educators is more than a waste of money. It is a prime example of the way in which social radicals use federal funds to further their own ends. In this case, they are using non-English-speaking immigrants to create divisions within American society — at the expense of the people they are claiming to help.

Bilingual education grew out of a decent enough motive: to help the thousands of children of the latest waves of immigrants learn to speak English so they could succeed in school. It's arguable whether federal funds should have been used for this in the first place. Millions of Germans, Poles, Japanese, Jews, and other immigrants of previous decades learned English and joined the mainstream of American life without federal programs, and I doubt that our more recent immigrants are any less able.

But the simple goal of teaching children got sidetracked. Some educators came up with the notion that it was wrong simply to teach immigrant children English. At a 1982 conference of the California Association for Bilingual Education, the ideal program for non-English-speaking children was described. "Children study most subjects in their native language while developing skills in English," the report said. And in the "best" programs, children "move slowly over a period of five to seven years, with the intention of developing proficiency in both languages."

Seven years to learn English! Any normal child could pick up a new language at the playground in a fraction of that time, at no cost to the taxpayer. But these educators want immigrant children to retain their ethnic identity — so they force them to study in their native language (even, in some cases, when the children already speak English). The result: children are trained to think of themselves as a separate group within American society. Compare this with the eagerness with which previous immigrant groups became Americanized (while managing to retain their ethnic identity quite nicely).

An organization called BABEL, the Bay Area Bilingual Education League, Inc., of Berkeley, California, illustrates the radical goals held by some bilingual educators. This group, recipient of more than $5 million in federal grants, calls itself "the best multilingual firm for your needs." Its ten-page list of services includes giving workshops to public-sector agencies on the lifestyle of the foreign-speaking people they serve, helping school districts follow all the regulations on bilingual education, and developing bilingual materials for children in special programs.

What sort of material for children? American history, civics, American culture and civilization are not on their list of subjects. But the foreign-speaking youngsters can take a bilingual course in social living, recycling, and energy.

At the same time, BABEL offers workshops to the parents. Now, studies have shown, as common sense tells us, that immigrant children are far more successful if their parents encourage them to become a part of American life by speaking English at home. Furthermore, BABEL itself stated in a grant proposal that the language barrier is a formidable obstacle to the self-development of immigrants. But BABEL's services to parents do not include English classes. Instead, they offer workshops on "parental involvement in real issues which require parents to exercise their rights," "equipping the parents to fulfill their roles as community leaders, teachers, fund raisers and program evaluators," and other incomprehensible courses.

A BABEL-sponsored program called the Campesina Project makes clear where all this jargon is headed. The project is aimed at helping Spanish-speaking migrant farm women, and its main goal is training these women in leadership skills. Again, learning English is barely mentioned. But filling out forms, obtaining food stamps, applying for Medi-Cal, community organizations that can help campesinas, women's rights, worker rights, how to understand the "system", and applying for grants are all topics included in the training sessions.

What a disservice to the immigrants! Instead of helping these people find the better life they seek, BABEL trains them to become part of the welfare class, to become experts in getting handouts and to see the "system" as their enemy — all paid for by Uncle Sam. It does not give them any orientation to American life and culture, or any idea of the responsibilities of American citizenship.

This taxpayer-supported radicalism is exactly the sort of program Ronald Reagan promised to do away with during his campaign. And the fed-up taxpayers responded by electing him president. But the actions of the Department of Education since Reagan took office have been an exercise in timidity. Education Secretary Terrel Bell's one important achievement has been his 1981 order to give school districts the *choice* of whether to educate immigrant children in their own language. A regulation had been scheduled to go into effect that would have made it *mandatory* to teach these children in their own language.

Bell then proposed to place bilingual education in block grants instead of funding it as a separate category. Under pressure from educators and Hispanic groups he quickly changed his mind, and kept bilingual education funding separate. According to Representative Paul Simon (D-IL), "If it hadn't been for Ted Bell, there might not have been a dime in the budget for bilingual education."

BABEL has continued to receive grants, and the radical Campesina Project is now in its third year, to the tune of a total of $248,186 in federal funds.

There is no excuse for the Reagan administration to continue to fund programs like these which do not help the people they purport to serve, and instead turn them against their adopted country. One solution is simply not to renew BABEL's grants. Better yet, President Reagan should remember the promise he made as Candidate Reagan, and get the federal government out of the business of educating our children, by dismantling the entire Department of Education.

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League of Women Voters Use Federal Funds to Push Abortion

INSIDE BUREAUCRACY

By Howard Phillips
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Foundation

The League of Women Voters, for more than 60 years one of the most potent influences for female participation in politics, is in trouble.

And like many another troubled enterprise, it's shown itself quite capable of selling out, in return for a financial bailout, to the bureaucrats who, despite the much vaunted "Reagan Revolution," still control the Federal pursestrings.

The League's membership has fallen off by almost one third since 1970, from a peak of 155,000 to a current level of 115,000 (*U.S. News and World Report,* April 19, 1982). By some accounts, (*The New Republic,* May 17, 1980) the League is, in many respects, a victim of its own success. As more and more women have abandoned—or been forced out of the home into the workplace, the pool of energetic, well-educated housewives upon which the League has traditionally relied for support has been drying up. The volunteers have to be replaced by at least some paid professionals.

At the same time, the League has been up against intensive competition from relatively new organizations such as Common Cause, which had 210,000 members in 1982 and a budget of $6.4 million, mostly from dues and contributions. These falling numbers have naturally enough meant that meetings of the League's approximately 1,400 state and local chapters—as well as the annual conventions—have focused on the need to develop new financial resources (*The New Republic,* May 17, 1980).

Corporations, foundations, unions and individuals have always been generous benefactors of the League. In 1980, for example, 66 corporations including a number of Fortune 500 companies, gave the League $180,795.

Contributions from 18 foundations amounted to $597,971. Individual gifts as well as bequests and trusts amounted to $201,627, and 18 unions provided $24,375. The grand total, along with incidental gifts—and $365,254 in government grants and contracts—amounted to $1,372,320 (Annual Report 1980, League of Women Voters and League of Women Voters Education Fund).

The budget, if not income, of the League in 1982 has been reliably reported to be 3 million dollars (April 19, 1982 edition of *U.S. News and World Report*). However, unlike Common Cause, the League does not derive its funds primarily from dues and contributions but from local leagues, foundations, unions, corporations—and, increasingly, from Federal funds.

A list of 30 grants to the League, its state and local chapters and the national education fund from Jan. 1, 1979 through August 1981, totals $2,342,044. Among the awarding agencies are the State Department, the Environmental Protection Agency, the National Science Foundation, the National Endowment for the Humanities, the Department of Education and the Department of Energy. During the period, the League also received grants from the Department of Housing and Urban Development, the Community Services Administration and other Federal Agencies (League Annual Report, 1980), but those figures are not included in the total.

The most interesting grant perhaps—certainly the largest—was $429,263 from the Energy Department for a Nuclear Energy Project. The nature of the "education" provided through the project can be reasonably inferred from the fact that the League has joined the National Association of Solar Contractors in a suit against President Reagan charging illegal impoundment of Federal funds (*Older American Report,* April 16, 1982).

The suit, filed April 8 of last year in Federal District Court in New York, is an effort to force issue of regulations for the operation of the Solar Energy and Conservation Bank. The bank has been allocated $21.85 million to lend and make grants for insulation, storm windows and other home weatherization improvements as well as encourage solar energy use and development.

Regardless of the merits of the case — and the value and virtue of solar and nuclear energy — the propriety of the League's role as litigant in the case is certainly questionable. It is particularly questionable in light of the fact that the principal attorney for the low-income plaintiffs in the case, Steven Ferry, is also chairman of the Solar Lobby, which would obviously benefit financially from favorable judgement in the case.

But then, the League has demonstrated little concern in recent years about participation in activities which cast a real or imagined shadow over real or potential conflicts of interest — and its long established but rapidly disappearing reputation for nonpartisan impartiality.

It has aligned itself with avowed interest groups such as the Environmental Defense Fund and the Friends of the Earth on such scientifically disputable issues as revision of the Clean Air Act and passage of the Coastal Zone Management Act of 1980 *(New York Times,* Oct. 5, 1980 and *U.S. News and World Report,* April 19, 1982).

It has not only endorsed the "right" of mothers to kill their babies *(Boston Globe,* A.P. story, Jan. 20, 1983), but apparently went out of its way to announce the policy just days from the anniversary of the 1973 abortion decision of the Supreme Court. By doing so, it directly challenged Archbishop John R. Roach of St. Paul and Minneapolis, president of the National Conference of Catholic Bishops, who issued a statement deploring the decision for "eroding respect" for life and hardening hearts against the most elementary claims of compassion."

The old League of Women Voters used to be described as the "Mother Hen" of American politics. There are those who regret she's been replaced by a Federally funded vulture.

FRAC Uses Tax Dollars to Lobby For More Food Stamp Spending

INSIDE BUREAUCRACY

By Howard Phillips
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Few Americans know that hundreds of millions of their tax dollars are being used by such liberal lobbying groups as the Food Research and Action Center (FRAC) to thwart the policies Ronald Reagan was elected to pursue.

FRAC was awarded $645,000 by the Community Service Administration (CSA), now the Office of Community Services, just before the Reagan Inauguration. FRAC's name suggests that the money is spent to promote nutrition and other noble goals. Late in 1981, however, the General Accounting Office (GAO) charged FRAC with illegally using government funds to lobby against a Federal "workfare" project.

The connection with food often is hard to find when examining many of FRAC's activities since the 1980 election. FRAC was active in organizing the "National Week of Action" in April, 1981 to protest the President's Economic Recovery Program, and the "National Day of Action" one month later.

Even before the inauguration, FRAC was busy. FRAC was one of the participants in a 1980 post-election conference in Puerto Rico. Perhaps sensing the future thrust of such Reagan policies as block grants, attendees discussed legislative advocacy strategy for both state and Federal levels.

Once Reagan was in office, FRAC was active in workshops designed to train cadres dedicated to defeating Reagan proposals.

In November of 1981, FRAC coordinated a Thanksgiving "paper plate protest" in which FRAC had local committees around the country gather paper plates bearing protest messages for shipment to the White House via FRAC's Washington headquarters.

FRAC also has been a national support center of the Legal Services Corporation, which has used its network of like-minded groups in coordinating a general protest of Reagan policies.

The FRAC philosophy bears little resemblance to that which most voters expressed in the 1980 election. At the Puerto Rico conference, a FRAC representative announced that "what all of us ultimately care about is meaningful welfare reform and a meaningful redistribution of wealth and income in this country. . ."

FRAC Executive Director Nancy Amidei, a one-time George McGovern organizer, once admitted that "upward of 60 percent" of its million-dollar budget comes from grants. The percentage is much lower this year, since the Department of Health and Human Services has taken over CSA programs. According to a Community Services spokesman in Washington, when Health and Human Services took over the programs it turned them over to the states in the form of block grants.

Government generosity to FRAC in 1982 was reportedly down to about $170,000, including an indirect grant award from the Federally-funded Western Center on Law and Poverty.

FRAC describes itself as an advocacy agency, so taxpayers can ponder the use of their money to promote a "meaningful redistribution of wealth and income."

In a typically deft bureaucratic flanking movement, FRAC exploits the tax dollars of citizens who support Reagan's cutback of the much-abused food stamp program, and lobbies for even higher food stamp funding.

FRAC's lobbying and advocacy are blatantly unfair. Tax dollars are being used to short-circuit the democratic process. Such a practice was denounced as "sinful and tyrannical" by Thomas Jefferson, and 200 years of national history have done nothing to discredit that view. That which has been considered unfair for so long should also be illegal.

Given the demonstrable inefficiency (and questionable constitutionality) of food stamps, the likely resentment of taxpayers if only they were informed, and the philosophy of the President, the suspicion grows that FRAC's activities must be a well-kept secret. If so, a solution suggests itself.

What Congress approves, Congress can also withhold. It is to individual senators and congressmen that pressure and full disclosure must be directed. As luck would have it, a few key committees and subcommittees in the Senate are chaired by potential allies of those who would oppose FRAC's subsidized advocacy. Republican Senators Jesse Helms and Gordon Humphrey, for example, chair respectively the Agriculture, Nutrition, and Forestry Committee and the Committee on Labor & Human Resources Subcommittee on Family and Human Services.

Why can't Helms and Humphrey hold public hearings to determine the scope and nature of FRAC's funding and activities? FRAC can hold all the fund drives it wants to replace its Federal funding, but Congressional oversight should make sure sure that no tax dollars sneak into FRAC's back door disguised as foundation grants. Congress has plenty of experience in attaching strings to its generosity.

It must be recognized that advocacy groups such as FRAC often adopt emotive, noble-sounding labels and pose as helpers of the needy. No one wants to be accused of hard-heartedness, least of all members of Congress. But those same legislators and their constituents should be alerted to the reality behind the noble facade.

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Howard Phillips

INSIDE BUREAUCRACY

U. S. "A.I.D.'s" Abortion Groups

Government agencies are expert in the knowledge of how to keep their favorite programs intact in spite of changing administrations. Career officials are adept at formulating official policies which rhetorically toe the line on administration requirements while altering little or nothing in their actual practices. They say the right words in order to ward off serious criticism but continue as before. One such agency that has refined this procedure marvelously is the United States Agency for International Development (AID).

AID is an agency of the State Department, whose mission is to spend your money overseas in accordance with the values and objectives of the foreign policy establishment. According to Kate Semerad, AID's Assistant to the Administrator of the Bureau of External Affairs, AID "does not engage in 'population control'." Rather, AID attempts to "help provide the tools for more food, improved education, better health, and hopefully longer and more productive lives." Of course, Semerad continues, the agency is concerned about rapid population growth but it always keeps in mind "enhancing human dignity and strengthening family life."

AID's administrator, M. Peter McPherson, has also waxed eloquent on the agency's concern for family life, stressing that the "guiding principles of AID's population assistance program are voluntarism and informed choice." McPherson adds that none of the approved family planning methods has anything to do with abortion, "which we do not encourage in any way." These statements have a proper sound to them but, unfortunately, they run headlong into the facts and disintegrate.

It is an established fact that AID's Office of Population Affairs funds five well-known abortion groups—The International Fertility Research program, The Pathfinder Fund (which "was buying abortion equipment for Italy even before abortion was legalized in that country." The United Nations Fund for Population Activities, The International Planned Parenthood Federation (which was reprogrammed for an additional $70 million dollars in 1983), and The Futures Group. Of course, "official" policy prohibits these grantees from advocating abortion with AID money, but the recipients are well enough endowed to use their own funds for such activities and then simply offset such expenditures with AID grants. In effect, AID had paid for the abortion business after all.

AID's sponsorsnip of abortion-related operations is especially suspect in its relationship with the American Public Health Association. Of its $6.16 million 1984 budget, $3.124.000 came from project grants and contracts funded largely by AID. APHA is listed in the *Congressional Record* among "medical associations which hold pro-choice positions on abortion rights."

Contract authorizes purchase of "drugs and equipment used in abortion-related research."

A sampling of APHA contracts with AID raises a number of questions. The APHA, in 1975, set up a Washington office with $610.549 in AID funds to maintain a liaison between that agency and APHA consultants in the field. The main function of the office is to give technical assistance to its overseas operatives, who are primarily involved in family planning programs. It took three years before abortion and sterilization amendments were added to this contract but they were written in such a way as to leave a gaping hole in the prohibitions. While the specific clause precludes the procurement of equipment for abortions, the educational promotion of abortion, or payments to persons obtaining or performing abortions as a method of family planning, the contract amendment explicitly authorizes the purchase of "drugs and equipment used in abortion-related research." This allows any abortion to be considered an "experiment," being done solely for research purposes.

In addition, no mention is made regarding the use of Menstrual Regulation Kits which can be used to perform suction abortions. Consequently, the abortion clause has the appearance of forbidding abortion while actually stopping very little.

The most blatant lack of abortion control occurred in a contract which set up a pilot program in Thailand. In this particular contract, which ran from 1976 to 1979, abortion and sterilization were never mentioned either in the original contract or in later amendments. Personnel, therefore, were unrestricted in their "family planning" techniques.

Another contract, which was in operation from 1979 to 1982, contained the strongest provisions to date, even including a ban on Menstrual Regulation Kits. Far from being an act of repentance, however, the wording of the ban again left the door open for continued use of the MR method. As in the case of the abortion clause in the first contract mentioned above, the MR ban was for family planning purposes only, and does not "prohibit support for the performance of uterine evacuation, including MR, for other medical, diagnostic and curative purposes."

The many loopholes created by the wording of contract amendments are adequate reason to ask questions and demand answers. AID may be in line with administration goals on the level of official policy, but the murder of unborn children has not been arrested.

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INSIDE BUREAUCRACY

Separation of National Council of Churches and State

The World Council of Churches (WCC), fervent supporter of Third-World pro-Moscow terrorist movements and communist regimes, has been both a direct and indirect beneficiary of the U.S. government. The Church World Service (CWS) program of the National Council of Churches (which is associated with the World Council of Churches) received at least $12,917,375 in Federal funds from the Department of State and the Agency for International Development (AID) during 1979-81. During the Fiscal Year 1981, the Department of State gave $3,089,555 directly to the WCC. AID granted an additional $10,105,528 to the CWS between 1982 and 1983. The National Council of Churches itself received $1,388,775 from various U.S. government agencies during 1978-81.

The World Council of Churches is a Geneva-based international ecumenical organization of more than 300 Protestant, Anglican and Eastern Orthodox churches — the majority of WCC members are churches in the Third World and state-controlled churches in the Soviet Union and Eastern Europe. In most cases, the U.S. churches belonging to the National Council of Churches also belong to the WCC.

Although the U.S. government funds were given for refugee relief work, the WCC does not always spend money on strictly humanitarian undertakings. Since its inception in 1969 up to 1983, the Council's Program to Combat Racism (PCR) has given approximately $4 million to pro-Soviet revolutionary movements in Angola, Mozambique, South Africa, South-West Africa (Namibia), and Rhodesia (before it became Zimbabwe), according to various newspaper accounts. "Recipients of continuing WCC grants include the African National Congress (ANC), controlled by the Soviet Union and South African Communist Party (SACP). . .ANC's front, the South African Congress of Trade Unions (SACTU); Soviet-trained and armed South-West Africa People's Organization (SWAPO); ANC and SWAPO support groups in the U.S. and Western Europe. . . and to movements in the Pacific islands who hope to ban U.S. Navy ships which might be armed with nuclear weapons. . ."

WCC officials claim the money given to the revolutionary groups was to obtain food and medicine; however, the WCC "recognizes that some of the recipients. . . do use military action in pursuit of the liberation of their country," and groups "which will cause serious injury or the taking of life." But as *The Washington Times* points out ". . .the actual spending is not audited by the PCR, nor is there any control once the money is granted. . ." Significantly, the WCC has *declined* to have the funds distributed through the International Red Cross "to ensure their use only for humanitarian work. . ."

The WCC munificence extends also to far-left groups in the U.S. The 1982 grantees of WCC included the National Conference of Black Lawyers, the Marxist-ied American Indian Movement, the Indian Law Resource Center, the Southern Africa Support Project, Washington Office on Africa, and TransAfrica (also in Washington). According to *The Washington Post*, TransAfrica was granted $27,000 in 1981 to help "mobilize against the Reagan Administration's growing partnership with the apartheid regime [of South Africa]."

Church Councils receive at least $27,501,233 from Federal government

According to various published accounts, other far-left groups funded by the WCC in the previous years include: Coalition of Concerned Black Americans, Free Southern Theatre, Malcolm X Liberation University, the Puerto Rican Solidarity Committee, Angela Davis fund, and Cesar Chavez's United Farm Workers.

A recent *Reader's Digest* exposé of the WCC funding points out that the National Conference of Black Lawyers is "an affiliate of the International Association of Democratic Lawyers — a group listed by the CIA as an international Soviet front organization." The magazine also asserts that "the American Indian Movement. . . according to 1976 Senate Internal Security Subcommittee report, has ties with Cuba, the Irish Republican Army, the Palestine Liberation Organization and the U.S. Communist Party."

The Church World Service Program — the *Reader's Digest* describes it as "easily the most popular NCC program" — has not escaped the ideological lance of the National Council of Churches. In an article on the NCC, the magazine asserts that the CWS program now also "engages in political advocacy, contributing churchgoer funds to programs designed to further strategic goals of governments with which CWS leaders sympathize. Recently, for example, CWS gave nearly half a million dollars for Vietnam's 'New Economic Zones' — which a number of newspapers depict as little better than concentration camps for 'political undesirables'. The magazine also says that "The new politicization of CWS also emerges clearly in the form of the CWS Office on Indochina Relations set up in Washington to 'educate' members of Congress and government agencies on the need for diplomatic relations with, and economic aid to, Vietnam."

The WCC — so vociferous in condemning racism in South Africa — has never protested human rights abuses in the Soviet Union or the Soviet-controlled regimes of Nicaragua, Cuba, Angola, and Ethiopia as well as communist North Korea. *The WCC has not protested the Soviet genocide of Afghan people, nor has it unequivocally condemned the Cambodian genocide under the Pol Pot regime.* At its 6th general assembly in Vancouver in 1983, the WCC denounced the U.S. plan to counter the Soviet missile threat in Europe, and U.S. "intervention" in Central America — but did not similarly condemn the Soviet occupation of Afghanistan.

U.S. taxpayers should insist that the Federal government dissociate itself from the National and the World Council of Churches. It's time to separate the National Council of Churches from the Department of State.

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EYE ON BUREAUCRACY

NATIONAL ENDOWMENT FOR THE ARTS: WHY THE GOVERNMENT SHOULD NOT BE IN THE ART BUSINESS

When the National Endowment for the Arts (NEA) was established in 1965, President Lyndon B. Johnson stated, "...it is in our works of art that we reveal to ourselves and to others the inner vision which guides us as a nation..."

The Endowment claims to "help develop the nation's finest creative talent...using federal resources to develop and promote ...support for the arts."

The National Endowment for the Arts supports arts projects which the private sector has apparently not deemed worthy of funding --- not due to lack of funds, but lack of interest.

Let us shed some light on various projects which the National Endowment for the Arts has funded as representative of "the nation's finest creative talent."

In 1981, the National Endowment for the Arts funded the following groups:

- The Frederic Burk Foundation for Education received $21,010 to support a 30-minute film on the making of piki (blue cornmeal bread)

- $5,000 was awarded to the Gay Sunshine Press for the "Gay Sunshine Journal"

- The Heresies Collection received $3,500 to support "Heresies: A Feminist Publication on Art and Politics "

- Camera News received $10,000 "to support Third World Newsreel's Basic Skills Film Workshop"

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- The Abraxas Foundation received a grant of $7,500 "to support an arts and crafts training program in an alternative-to-incarceration community...to culminate in a traveling exhibition"

- $10,000 was awarded to the Federation of Southern Cooperatives, a resource and advocacy organization in rural Alabama, to "support an instruction program in African and jazz dance, drama and conga rhythms for the residents of Sumter and Greene counties"

- A 60-minute film, entitled "Sunday, February 21, 1965: The Day Malcolm X Was Killed", was funded with a $25,000 grant to the National Black Touring Circuit ($15,000 came from the NEA, $10,000 in the form of Treasury funds)

- An organization called Lettumplay supported "four series of classes in traditional blues harmonica for inmates at Lorton Prison" with a grant of $5,820

- $17,500 was awarded to the Black Emergency Cultural Coalition to support extension of "Prison Arts" to an increased number of correctional institutions

- The Women's Community, Inc. received $10,000 for a "New Moves Program" to acquaint ex-offenders, ex-drug users, and "otherwise disadvantaged women" with the arts and humanities.

With all that we have heard about how a tightening of the Federal budget has adversely affected the arts in America, the National Endowment for the Arts has still seen fit to fund groups of questionable artistic merit. The following examples of America's "finest creative talent" survived the Reagan 'budget ax' and received National Endowment for the Arts funding in 1982:

- the National Conference of State Legislatures (NCSL), an interest group which opposes New Federalism as proposed by the Reagan administration, receives millions of taxpayer dollars, and lobbies heavily on Capitol Hill, got $76,000 in National Endowment for the Arts funds in May.

NCSL's president, William T. Pasannante, a member of the New York Assembly and a leader in the battle for legislation to protect homosexuality, has a 95 percent voting record from the Americans for Democratic Action, a 35 year old liberal organization in New York which, according to In These Times (the Independent Socialist newspaper), "publishes the oldest and most widely recognized candidate ratings on liberal issues in the country."

- the Pacifica Foundation/KPFK FM, a group of 5 U.S. radio stations long cited as a network for leftist propaganda, received grants for $6,000 and $2,700.

The network's literature brags, "[1950] Pacifica fearlessly includes communists in its programming...[1958] first live broadcast on the gay experience by gays themselves... [1965] a reporter for WBAI (a Pacifica station in New York City) is the first U.S. reporter to go to North Vietnam...[1965] Pacifica holds the first of many anti-war radio teach-ins... [1966] leaders of S.D.S. [Tom Hayden's Students for a Democratic Society] come to Pacifica to discuss the future of civil rights...[1973] George Carlin's controversial Seven Words You Can't Say on TV is aired..."

- the National Council on the Aging, Inc., which actively opposes budget cuts in programs from which it receives funding, received $40,000.

How many U.S. citizens would want the American spirit expressed by an erotic Art show funded, in part, by a $9,000 grant from National Endowment for the Arts Artists Spaces category in 1982?

Although Washington Women's Art Center, the recipient of the 1982 financing, did not include the Art show as a scheduled event on its grant application (spokesmen say they did not know what the center would be doing during the 1981-82 season), it was able to credit the National Endowment for the Arts and a Georgetown store of erotica for its support.

What better example, not only of the type of "arts" projects which should never be Federally funded, but of the pressing need for extensive reform of the grant application and award process at the National Endowment for the Arts.

Alice Sims, a "Women's Art Center" employee, tried to justify the exhibit's existence by explaining that it was only "women expressing what is erotic." Ms. Sims' casual statement and the role of artists in society are brought into perspective with University of Dallas Professor M. E. Bradford's observation that the National Endowments should "show a greater respect for the given character of the regime which they serve."

Professor Bradford further asserts that "emphasis on new and experimental approaches to teaching or performance in the ...arts should be reduced. Strict supervision should be exercised over...programs and...grants should be justified..."

Overall direction to the work of the National Endowment for the Arts is provided by the chairman. By law, Frank Hodsoll, who left his White House job with Chief of Staff James Baker to become National Endowment for the Arts chairman, "makes final decisions on policies, programs, procedures, and the awarding of all grants and contracts."

The government should not be in the art business. Why should taxpayers subsidize art forms that private groups and individuals are able, but unwilling, to support themselves?

The House Appropriations Subcommittee on the Interior has recommended $143.8 million for 1983 --- $760,000 more than the 1982 National Endowment for the Arts budget. What is the logic in such an increased appropriation? Will those additional thousands be spent on more of the same kinds of questionable, down right objectionable, projects? Such blatant misuse of Federal funds should no longer be tolerated.

If the government continues to sponsor the arts as documented herein, the greatest concern is with the public whose tax dollars are being spent on experimental, erotic, third world and homosexual oriented projects.

The National Endowment for the Arts believes that art is an "appropriate concern of the people, and hence a proper concern of the government."

It is about time this government showed some proper concern and respect for its tax paying citizens.

America does not need a ministry of culture, with its own taxpayer subsidized priesthood of taste. President Reagan should veto all funds for the National Endowment for the Arts.

In a free society, we can decide for ourselves what playwrights, poets, and propagandists to support.

We do not need to be taxed to let others decide for us.

Michele N. Rossi
Director, Research

EYE ON BUREAUCRACY

APRIL 1983

THE NATIONAL COUNCIL OF CHURCHES: YOUR TAXES HELP FUND THIS ESTABLISHMENT OF "RELIGION"

Thanks to recent exposés, millions of Americans who faithfully contribute to their churches each year are at last realizing that some of their donations have been used to finance Marxist governments and support anti-American causes.

But, do they, and other U.S. citizens, understand that their tax dollars have also been used to support the radical National Council of Churches (NCC) through grants by the National Endowment for the Arts and the Departments of Energy and Labor?

Founded in 1950, the National Council of Churches is an organization which includes 32 Protestant denominations. Affiliated churches claim a membership of 40 million. The NCC is led by 57-year-old Bishop James Armstrong, who has criticized the Moral Majority and attacked Rev. Jerry Falwell for his fundamental stands on the Bible, the Equal Rights Amendment, the family, and abortion. Armstrong, who became a bishop in the United Methodist Church in 1968, has also served on the advisory council of the National Coalition to Ban Handguns.

A 1980 grant to the National Council of Churches by the Department of Labor in the amount of $435,775 supplemented a $500,000 award made in 1978 for a Comprehensive Employment and Training Act (CETA) program to "develop and coordinate incarcerated veterans outreach projects" to provide "educational and training opportunities during the period of incarceration, eliminate barriers to future employment posed by adverse discharges, carry out extensive followup services with veterans upon release from institutions, and to seek to offer alternatives to incarceration both prior and subsequent to incarceration."

Available Department of Labor grant documents, which fail to identify any "alternatives to

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incarceration" and give no indication of the nature of the crimes for which veterans were incarcerated, do reveal that during the period of the grant, the number of jailed veterans to be reached by the NCC project dropped from 21,000 to 14,400.

The Department of Energy granted at least $438,000 to the NCC during 1979-1981. $10,000 of that sum was awarded in December 1980 for the "preparation of graphic materials to illustrate the need for emergency planning and the necessity for full community involvement ...materials would include posters and illustrated printed materials to focus attention on the necessity for energy emergency planning at the community level."

The NCC contended in its application that "religious leaders have the credibility and the ability to mobilize mass action on energy."

The remaining $428,000 in Department of Energy funds was for an energy education project to "provide energy-related learning experience to the National Council of Churches' constituency through coordination with other organized groups, in order to enable them to make independent and sound judgments on energy policy and to act responsibly in their use of energy."

The NCC's grant proposal states that "energy is a social problem with a profoundly moral dimension" which affects "values." It is further asserted that the Council's Energy Education Project "is unique in approaching energy production and use as a social, rather than ...a technical or economic" issue.

"Churches will be active participants," the proposal continues, in the Citizen/Labor Energy Coalition (C/LEC), a Left-wing group organized by Heather Booth (who has also been President of the Federally funded, radical training school, the Midwest Academy) and led by William Winpisinger, the self described "socialist" President of the International Association of Machinists and Aerospace Workers.

C/LEC represents itself as "a national alliance of labor, citizen action, civil rights, senior citizen, and public interest groups...organizing a grass roots citizens force to challenge the power and political influence of oil companies and utilities."

On the Board of Directors of C/LEC are such Federally funded groups as the Amalgamated Clothing & Textile Workers Union, Association of Community Organizations for Reform Now (ACORN), the National Council of La Raza, Massachusetts Fair Share, and the Ohio Public Interest Campaign.

Additionally, the Citizen/Labor Energy Coalition, and its research arm the C/LEC Foundation, have received at least 7 grants from the Federal government.

President Reagan's Energy Department awarded $10,000 to the Foundation for "petroleum data" on 5/29/81. Two other grants from the Department of Energy total $47,640 (8/31/79 & 8/5/80). The ACTION Agency awarded four grants to the C/LEC Foundation in 1980 totaling $22,600.

The Community Services Administration gave the Citizen/Labor

Energy Coalition $200,000 in 1980 and eight VISTA volunteers became involved with C/LEC in a 1979 government sponsored program to "organize 300-500 low-income consumers into energy activists."

The C/LEC Foundation's Executive Committee includes not only some of the aforementioned Federally subsidized groups, but Tom Hayden/Jane Fonda's radical Campaign for Economic Democracy (CED) and the National Council of Senior Citizens, which, according to the National Journal received $50 million of its $52.5 million budget from Federal grants in 1981.

A $15,000 grant to the National Council of Churches from the National Endowment for the Arts in Fiscal Year 1980 funded a 50-minute color documentary, to be produced in association with the United Nations, on Zimbabwe's "history and...early resistance to British imperial expansion."

Interestingly, the NCC's project money from the National Endowment for the Arts was never used for production of the film described, but was instead used for a sympathetic film on Marxist Mozambique "tying in Zimbabwe and South Africa, as well as Namibia, in...treatment of social change and evolution in Mozambique."

V.I. Lenin urged that church leaders and the young be used to advance the ends of international communism in creating pacifism and resistance on the part of those in the Western world to defend their own countries. Lenin's philosophy, as reported by Capt. G. Russell Evans, USCG (Ret.) and Dr. C. Gregg Singer in their book, The Church and the Sword, (St. Thomas Press, Houston, TX, 1982) states that "powerful organizations of non-Communists can be created for this purpose, particularly liberal minded ministers, professors and lecturers."

"The evidence seems indisputable" according to Methodist minister Reverend Karl Justus, former Chaplain General of the Military Order of World Wars, "that the persistent, persuasive, [and] emotionally-charged preachments and statements by the perennial pacifists of the National and World Councils of Churches..., the Bishops and clergy leaders of several main-line denominations in America... have served to increase the pressure and helped to mount a massive campaign for a nuclear freeze."

It is difficult to accept the U.S. government's involvement in the financial support of a group which claims to "bring churches into life-giving fellowship and into common witness, study and action to the glory of God and service to all creation," but which instead supports abortion on demand (NCC Temp Newsletter, October 1973), the Equal Rights Amendment (NCC statement, March 1975), homosexual rights (Religious News Service, March 11, 1975), and forced busing of school children (NCC statement, 1974).

The National Council of Churches is, as the American Spectator reports, "out-of-step with its own constituents" on such issues as forced busing (82.3% of NCC members polled opposed the busing which a 1974 NCC statement supported) and the death penalty (68.1% of members favor the death penalty which the NCC lobbies against).

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The growing dissatisfaction among understandably wary churchgoers with respect to the actions of the NCC is documented in a January 1983 Reader's Digest article by Dr. Rael Jean Isaac. Dr. Isaac concludes that the loss of over three million members from ten NCC member denominations in the past decade is due in great part to the "obsession of the church leadership with advancing causes that contradict the basic beliefs of most churchgoers." NCC official, Dean Kelley, adds, "The gap between the denominational leaders and the people in the pews is huge."

The Federally funded NCC contributes to its parent organization, the World Council of Churches (WCC), with which it shares offices on Riverside Drive in New York. The Presbyterian Layman reports that in 1981 the NCC contributed $2,754,055 to the WCC.

The WCC uses contributions to support such radical organizations as the Soviet-backed South-West African People's Organization (SWAPO), ($125,000 in 1981) headed by terrorist Sam Nujomo, and the Marxist African National Congress ($65,000 in 1981).

Church World Services, a branch of the National Council of Churches, in 1980 alone received more than $12 million in Federal contracts from the Department of State.

Methodist evangelist Edmund Robb explained, in a surprisingly accurate segment of 60-MINUTES dedicated to exposing the radical, political tendencies of the NCC and WCC, that "in every geographical area of this nation people are concerned...aroused, about the radical Left-wing views of the National Council of Churches.. I noticed a pattern of support of totalitarial [sic] leftist regimes across the country, across the world..."

NCC leader Armstrong also appeared on 60-MINUTES. When Morley Safer challenged him, saying: "A great deal...of the National Council...would seem to, not exactly belong to the Marxist system, but speak in much the same language," Bishop Armstrong responded, "Well, you're asking me to speak in the language of the United States Government. I won't."

I wonder what language Armstrong uses when he applies for grant money from the U.S. Government.

The signal is clear. Not only should churchmen wash their hands of the NCC's politics, but elected representatives and government leaders should guarantee that the National Council of Churches is never again funded with American dollars.

Religious groups are government funded. Amazingly, your taxes help fund this establishment of religion.

Michele N. Rossi
Director, Research

EYE ON BUREAUCRACY

JULY 1983

LEGAL SERVICES CORPORATION GRANTEES PROMOTE ABORTION DESPITE RESTRICTIONS

"How to Curb Abuse: Regulation or Abolition?"

FUNDING OF STAFF ATTORNEY SYSTEM MAKES CONGRESSIONAL INTENT DIFFICULT TO ENFORCE

The Legal Services Corporation (LSC) is a 501 (c)(3) corporation established in Washington, D.C. and funded by the U.S. government, which makes grants to 325 non-profit organizations throughout the United States. LSC received appropriations of $321 million in Fiscal Year 1981 and $241 million in Fiscal Years 1982 and 1983 each.

The Legal Services Corporation Act of 1974, section 1007 (b) (8), states that:

> No funds made available by the Corporation under this title, either by grant or contract, may be used...to provide legal assistance with respect to any proceeding or litigation which seeks to procure a nontherapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution.

The language quoted above is instructive in demonstrating how apparent restrictions attached to legislation in an effort to defuse conservative opposition can be almost completely devoid of meaning and practical impact.

1.) The wording "under this title" limits the applicability of these prohibitions to funds "made available by the Corporation" under Title X.

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Thus, grants received by legal services groups from other government and private sources may be used in complete disregard of this prohibition.

LSC grantees have received funding from such private sources as the Ford Foundation and the Greyhound Corporation (both support the Native American Rights Fund according to the NARF 1975 annual report), as well as from private citizens and the United Way (Greater Boston Legal Services received $421,000 from the United Way in 1981).

Additional Federal funds have come from the Departments of Justice (over $1.1 million to the National Legal Aid and Defender Association in 1979), Interior (over $230,000 in 1981 to the Native American Rights Fund), Health and Human Services (over $370,000 in 1980 to LSC headquarters in Washington, D.C.), Education ($34,000 in 1981 to the New Haven Legal Assistance Association), and the National Endowment for the Humanities ($55,424 in 1980 to the Mental Health Law Project).

There is no limit to the amount of Federal funds for which LSC grantees may apply. Nor is there any Federal agency to which they cannot apply for funding.

Grant and contract money awarded under: Title XX of the Social Security Act, Title III of the Older Americans Act, the Community Services Administration (now the Office of Community Services within HHS), the now defunct Comprehensive Employment and Training Act (CETA), revenue sharing funds, Community Development Block Grant funds, and the VISTA program, among others, has also gone into LSC grantee coffers.

New sources for LSC funding, including legal fee awards, trust fund interest, and real estate investments are being expanded.

2.) Nor does the language of section 1007 (b) (8) barring "legal assistance with respect to...a nontherapeutic abortion" prevent legal services groups from providing legal assistance with regard to any procedure or litigation which seeks to procure a "therapeutic" abortion.

"Therapeutic" has been variously defined.

According to a March 14, 1979 letter by Thomas Ehrlich, then

LSC president, to Congressman Romano L. Mazzoli (D-KY), the "term 'therapeutic abortion' [is] not limited to procedures necessary to save the life of the mother."

Robert J. Marshall, Director of Public Relations for the American Life Lobby, says that a therapeutic abortion "is an attempt to prevent the death of the mother and if possible, avoid the death of the baby."

In practice, abortions have been deemed to be therapeutic when the "mental health", self-image, or attitude of the pregnant mother is made an issue.

3.) No restrictions whatsoever apply to organizing, lobbying, propagandizing, or litigating by LSC grantees concerning abortion, if procuring or performing an actual abortion, in the context of a particular proceeding or litigation, is not involved.

In Reproductive Freedom Issues in Legal Services Practice, by Sylvia Law, a member of the Board of Directors of the National Health Law Program (a recipient of $677,865, $503,542, and $503,542 in 1981, 1982, and 1983 from LSC), it is asserted that pro-abortion efforts by legal services lawyers will provide "opportunities to form alliances with others, help develop community organizations, and strengthen the political base for dealing with issues that critically affect the lives of their clients" (Clearinghouse Review, November, 1978).

Pro-abortion propaganda is incorporated in tax-subsidized articles such as Developments in Women and Family Law: 1981, written by the staff of the National Center on Women & Family Law, ($268,150 in 1981, and $202,174 in both 1982 and 1983 from LSC), which argues that abortion would be in the best interest of most young women because "the Court seems to believe that a girl who is too immature to make a decision to choose an abortion is nevertheless mature enough to be forced to be a mother" (Clearinghouse Review, January, 1982).

One of three trustees of the National Center on Women & Family Law is Elizabeth Schneider. The other two trustees are Marjory D. Fields of the Brooklyn Legal Services, and Demita Frazier of the Legal Services Institute in Massachusetts.

Elizabeth Schneider is also an attorney for the Center for Constitutional Rights (CCR) (headed by leftist William Kunstler, among whose clients have been the "Chicago Seven"; Kathy Boudin, a key figure in the Weather Underground; members of the Black Panthers; witnesses in the 1968 House Committee on Un-American Activities hearing, at which Kunstler was ejected for disrupting the proceedings).

The CCR is described by Information Digest (February 12, 1982) as a tax-exempt litigation organization which uses the law "as an instrument of resistance."

LSC subsidized, pro-abortion litigation has included the following cases:

* Preterm Inc. v. Dukakis - in 1978, Greater Boston Legal Services ($2,285,187, $2,444,558, $1,842,952, and $1,843,952 from the Legal Services Corporation in Fiscal Years 1980, 1981, 1982, and 1983) challenged "a Massachusetts law limiting expenditure of state funds to abortions necessary to prevent the death of the mother" (Clearinghouse Review, April 1979).

* Zbaraz v. Quern - in 1978, the Legal Assistance Foundation of Chicago ($4,280,376, $3,255,061, and $3,256,061 in 1981, 1982, and 1983 from LSC) "successfully sought an injunction against enforcement of an Illinois statute preventing state medical payments for abortions except when necessary to save the life of the mother" (Clearinghouse Review, March 1979).

* Stopczynski v. Milliken - in 1979, Michigan Legal Services ($302,129, $317,235, $447,569, $337,422, and $337,422 in Fiscal Years 1979, 1980, 1981, 1982, and 1983 from the LSC) filed an amicus brief in favor "of a governor's item veto of a provision barring state funds for nontherapeutic abortions" (Clearinghouse Review, October 1979).

* Planned Parenthood Association, Inc. v. Leo Hegstrom (May 4, 1981), where petitioners represented by the Oregon Legal Services ($1,921,617, $1,497,311, $1,507,875 from LSC in 1981, 1982, and 1983), challenged "Oregon's policies which restrict the number of Medicaid funded abortions" (Clearinghouse Review, August/September, 1981).

* Legal Assistance of North Dakota ($969,579 in 1981 and $735,629 in 1982 from LSC), representation of the case Valley Family Planning v. North Dakota in 1981 where they succeeded in having declared invalid a ban on "abortion referrals by publicly funded family planning organizations" (Clearinghouse Review, April 1982).

An article by an attorney of the National Center for Youth Law (a recipient of $625,158, $662,667, $499,622, and $499,622 from LSC in 1980, 1981, 1982, and 1983), opposed the imposition of "parental consent and notification requirements, either through legislative advocacy or through litigation" (Clearinghouse Review, February 1980).

Another article, co-authored by Pauline H. Tesler, also an employee of the National Center for Youth Law, states that circumstances exist where LSC "attorneys may wish to provide information to clients about the requirements of the law, or to bring state or federal constitutional challenges to such requirements because they may deter, delay or preclude obtaining any abortion" (Clearinghouse Review, January 1981).

In 1982, an advocacy training manual entitled Just Us, was published by the Legal Training Unit of the Office of Program Support (LSC) "to remove the obstacles to productive relationships between Legal Services Programs and client and community organizations."

Just Us is a Federally subsidized listing of "allies for those who share a deep commitment to community empowerment for the poor." "Allies" include pro-abortion groups such as the National Organization of Women (member of the Ad Hoc Committee to Defend Abortion Rights), the League of Women Voters, and the National Lawyers Guild (member of the Ad Hoc Committee to Defend Abortion Rights).

Along with the "networking" and coalition activities with pro-abortion groups described in Just Us, the LSC continues to provide direct and indirect financial support for organizations which sponsor abortion advocacy programs.

The 14th National Conference on Women & the Law (held in Washington, D.C., April 7-10, 1983) included among its list of principal sponsors, the Antioch School of Law, an LSC grantee

($353,025 in Fiscal Year 1982 and $354,025 in Fiscal Year 1983 from LSC).

The conference centered around "third world women, women of color, lesbians, disabled women, poor, rural, and older women."

Listed on the conference agenda was a workshop entitled Adolescent Sexuality, dealing with issues surrounding "teenage sex and pregnancy, sex education, contraception and abortion impediments, and issues affecting disabled adolescent women" and a meeting called Genetic Screening and Engineering which concentrated on "the legal and ethical issues regarding the use of genetic testing, amniocentisis, selective abortion, eugenics, and quality of life for disabled infants."

Clearly, previous restrictions, however well intended, have had little effect on the involvement of the Legal Services Corporation and its grantees in pro-abortion activism.

As Howard Phillips, Chairman of The Conservative Caucus, Inc., pointed out at a public hearing of the U.S. Senate Committee on Labor and Human Resources on May 4, 1983:

"During the past decade, this committee has sanctioned the activities and employment of more than 20,000 public policy activists whose guaranteed salaries and control over the supply of a service made 'free' by taxpayer subsidy, have given them the freedom to organize, propagandize, lobby, litigate, patronize, and proselytize for their preferred causes---unchecked either by market accountability or the close scrutiny of the people's elected representatives...Congress has sought to contain abuses by passing regulations against pro-abortion activism, against homosexual proselytization, against representation of illegal aliens, against lobbying.

"Predictably, despite biennial assurances that the latest 'reforms' have at last cured the abuses, the abuses have continued, ever more blatantly, ever more comprehensively.

"...remedies are to be found not in more regulation, but in a fundamental redesign of the Legal Services program.

"True reform can be achieved by relying upon the checks and balances of a fee for service, client-accountable system, rather than continuing a bureaucratic system (however much regulated) in which satisfaction of consumer need and market demand is entirely at the discretion of subsidized service providers."

Opponents of abortion are concluding that termination of Federal funding to the LSC and its staff attorneys is necessary to reduce the clout of the political activists who oppose the pro-life cause.

Michele N. Rossi
Director, Research

EYE ON BUREAUCRACY

April 1984

THE C/LEC CONNECTION:

YOUR TAXES IMPLANT ACORN'S PLAN TO UPROOT FREE ENTERPRISE

The Association of Community Organizations for Reform Now (ACORN) calls itself a community organization of "low and moderate income people" concerned with their advancement in "every area of their interest and concern."[1]

"ACORN was indulged at first as the visionary tinkering of post-Vietnam War youths looking for a cause. Now that it has become a threat - and the membership rolls have taken on as many old folk as youngsters - the country clubs and chambers of commerce that historically have run things in towns like Little Rock have begun to stir uneasily."[2]

"OBJECTIVES FOR THE 1980's"

Organized in the early 1970s as "an offshoot of the National Welfare Rights Organization," ACORN "aimed for a broader base including medium- as well as low- income people."[3] "Objectives for the 1980s" by this Federally funded activist group cover a variety of issues:

"(1) **halt the construction of nuclear power plants** until all safety, waste disposal and liability issues are resolved; (2) establish new public energy companies to develop resources on federally owned land; (3) **prevent any single corporation from owning a major interest** in more than one energy source or step up the energy development process; (4) create a new national health care system which makes 24 hour 7 day a week health care available...is progressively financed, **puts doctors on set salaries...**(5) require subsidized development projects to find replacement housing for every person they displace, enact a confiscatory tax on income from real estate speculation; (6) **create one million new units of federally subsidized housing** for low and moderate income people; (7) guarantee the right to a job which pays a living wage and **offers the opportunity for**

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advancement to every person who wants to work; (8) prohibit investor owned non-farm corporations from owning agricultural land..."[4]+

YOUR TAXES HAVE SUBSIDIZED ACORN

ACORN has been receiving Federal funds since 1976 from such governmental agencies as the Community Services Administration, the National Endowment for the Humanities, the Federal Trade Commission, ACTION, and VISTA, including:

* a **$60,000** grant from the National Endowment for the Humanities awarded to the Louisiana ACORN in 1980 for a project conducted in conjunction with the Institute for Social Justice. The purpose of the grant was to support "planning for a two-year educational program in the humanities for low and moderate income members of ACORN..."

This grant was renewed in 1981 with an additional **$201,558** in taxpayer dollars with a slight shift in the stated purpose of the grant "to mount public humanities programs explaining the history of social movements for low to moderate income people."

*additionally, the Community Services Administration awarded **$25,000** to the Texas ACORN in 1981, while ACTION awarded **$2,000** to the Oklahoma ACORN in 1980.[5]

ACORN USES VISTAS FOR POLITICAL ORGANIZING

Besides direct funding, ACORN has also had the benefit of the services of taxpayer-subsidized VISTA volunteers. According to the agency's volunteer assignment records, the purpose of VISTA help to ACORN was to "Organiz[e] low-income people into effective neighborhood/community groups..."[6]

ACORN organized the Community Organization Research Action Project (CORAP) in July 1977, "for the purpose of receiving and administering the VISTA grant funds." On September 20, 1977, CORAP was awarded a grant "in the amount of **$470,475**...[to provide] for the training of 100 VISTAs, of whom 80 were to be placed with the ACORN ...field organization to work with low-income people on a broad scope of local issues..."[7]+

"**...all VISTAs assigned to the [CORAP] grant are still indirectly involved in labor organizing activity by collecting ACORN membership dues which are used, in part, to pay the salary of the chief organizer,** who is personally responsible for the household workers' union organizing drive."[8]+

Upon investigation, it was found that CORAP "VISTAs from the St. Louis area had been asked to make weekend trips out of State to petition **for a referendum on repeal of a sales tax on food and medicine in Arkansas,** over 350 miles away." Among the conclusions reached by the investigation was that "ACORN's predisposition to make its own rules for using VISTAs, has resulted in poor or nonexistent oversight of projects and improper assignment of volunteers."[9]+

Although CORAP was incorporated, establishing a so-called financial separation from ACORN, "It is otherwise difficult to distinguish between the makeup and operation of the organizations. The officers of both the CORAP board and the ACORN board are the same individuals. **The project supervisor and the project coordinator are paid under the grant for full-time employment,** but both are also on the ACORN payroll. Training under the grant is provided by the Arkansas Institute for Social Justice,...another spinoff organization run by two former ACORN organizers."10+

RULES FOR RADICALS

ACORN uses a variety of tactics to accomplish its socialistic agenda. Most of these tactics can be seen clearly in excerpts from ACORN's Community Organizing Model.

One particular key is:

* "an organizer's skill in prying information and setting up his [the contact's] ego in order to lossen [sic] his tongue in person or on the phone. It's a skill to be perfected, if you're greasy, you are in the hole"

Their racial exploitation is shown in the admonition:

* "Only go black first if you never want a white membership in the area, or if the area is all black"

ACORN organizers are not even beyond using the semblance of religious zeal to further their own goals:

* "Opening the meeting with prayer produces order in the meeting, sets of uncertain expectations, and gives legitimacy to your purpose"

Organizers are also advised:

* "Ministers, in general, and especially of smaller, neighborhood churches, often can tell you who some good people are who have not been overly active. He can also give you names of people in the church who have had low income problems and might be naturally more sympathetic."11

Other tactics about which ACORN brags include:

* "Our ability to seem 'morally' and actually right on the issue or campaign is key"+

* "Our ability to exploit the political situations"

* "Ability to escalate the campaign, makes us appear reasonable and justified, and maintain momentus [sic]."12

ACORN ALLIANCES

ACORN has formed a number of alliances, through spinoff organizations, unions, legal services grantees, and others, which have helped it to attain its goals. Many of these allied organizations have also been Federally funded.

The Institute for Social Justice, an ACORN spinoff, is Federally subsidized through not only the joint projects it conducts with ACORN, but also through the National Science Foundation, which awarded it a grant in the amount of **$25,274.00** in 1980 for "research and reports on mortgage disinvestment in neighborhoods of low and moderate income."13

"ACORN's approach forms the basis for the training provided by the Institute for Social Justice... [which] focuses heavily on nuts-and-bolts organizing skills..."14

ACORN FORMS OWN LABOR UNION

ACORN has formed alliances with unions in several areas of the country, and even formed its own union in 1979, "the United Labor Unions (ULU), an independent union with the expressed purpose of organizing low-wage workers in four cities."15

The alliance between the Teamsters and ACORN is of particular interest. "TEAM is an acronym for the Teamsters Engineers ACORN Movement. It unites Teamsters Local 270, Operating Engineers Local 406, and ACORN's Local 100 (ULU) in an organizing campaign directed at working-class neighborhood residents, low-wage workers, and the churches where both worship."[16] Again we see the insidious use of religion to fuse grass-roots organizers together.

"TEAM was formed to make New Orleans a union town once again... by combining the bargaining know-how and political muscle of the Teamsters and Engineers with ACORN's street skills and neighborhood base...The lynchpin of the TEAM strategy is the 1984 World's Fair...TEAM is organizing on the premise that neighborhood residents and hotel workers...deserve a fair share of the Fair."[17]

According to Daniel Cantor, organizer for TEAM, "...all of the theoretical reasons why alliances between labor and community groups happen or don't happen are secondary to the actual experience of working together on joint campaigns."[18]

In connection with ACORN's other alliances:

* Missouri ACORN members teamed with with labor in opposing the 1978 "right-to-work" referendum

* the Teamsters served as hosts for the Reagan Ranch in Houston in November of 1982

* Arkansas ACORN joined with the AFL-CIO to repeal the food and drug sales tax

* the Letter Carriers local in Memphis worked with ACORN on the issue of mailing out food stamps.[19]

According to The New York Times, "A national coalition of union, consumer, liberal and leftist groups is emerging with the purpose of starting a broad, aggressive attack on what the activists regard as flagrant abuses of corporate power."[20]

LEGAL SERVICES CONNECTION

Grantees of the Legal Services Corporation have been included in this 'coalition building.' "ACORN campaigns generally involve demonstrations, confrontations with industry and government officials, and significant media coverage."[21] In order to accomplish their goals, "ACORN uses lobbying, publicity, lawsuits, public hearings and any other kind of persuasion it can find."[22]

Coalition building between ACORN and the various Legal Services Corporation grantees was part of the LSC's overall "survival campaign" designed to form "networks and coalitions of organizations so as to effectively operate a nationwide grassroots campaign to lobby Congress in support of policies advocated by the Corporation."[23]+

Community Legal Services (CLS), located in Philadelphia, Pennsylvania, provided representation for ACORN on a variety of issues including: "challenging...fare increases...Electric Company...increases...water and sewer rate increases, negotiating with the state Insurance Commissioner regarding 'redlining' practices of insurance companies and challenging automobile insurance rate increases...More recently [CLS] has represented ACORN in challenging the administration of the Community Development Block Grant program as well as the [City of Philadelphia's] Gift Property Program... [CLS] is also representing ACORN in a matter pending before the state commission on charitable organizations, in which ACORN is seeking exemption from some of the reporting requirements of 'charitable organizations'."[24]

SOLICITOR QUESTIONS CLS INVOLVEMENT

The extensive representation of ACORN by Community Legal Services prompted Mark Jurikson, Deputy City Solicitor to ask the Pennsylvania Legal Services to investigate the "allegations concerning the misappropriation of public monies and utilization of CLS attorneys by various organizations for political purposes."[25]

Specifically citing ACORN, Jurikson argued that "...**ACORN is not primarily composed of persons eligible for legal assistance under the [1974 LSC chartering] Act.** In fact, to my knowledge, ACORN has not released to any organization or agency a membership list containing the names, addresses or incomes of its members...I assert that... **[ACORN] has more than adequate capital to retain private counsel. A meaningful investigation into this question would have revealed that ACORN advertises in newspapers for 'activists' to be salaried employees of ACORN...I would note that ACORN has opened up over twenty-five field offices in the City of Philadelphia, and is paying rent and utilities for all of these locations. If ACORN professes poverty, then why [not] open up its books** for the Pennsylvania State Charitable Commission..."[26]+

ACORN ACTING IN LEGISLATIVE ADVOCACY

Jurikson continues, "...**ACORN in fact has retained private legal counsel on many occasions when it was unable to 'dupe' or enlist the aid of an organization such as CLS into providing free legal services ...I find it very interesting that ACORN can afford to have a general coun- sel operating out of New Orleans and Little Rock, Arkansas, and on the same hand not be able to afford paid legal counsel in the city of Philadelphia.**"[27]+

Community Legal Services became engaged in legislative advocacy on behalf of ACORN when it helped draft a Gift Property reform ordinance. "The request for the bill came from ACORN as well as Councilman Lucien Blackwell, who introduced the bill...**Resources in this work have been charged to [CLS] by marking the case an LSC case,**" asserted the executive director of CLS in a letter to the director of the Pennsylvania Legal Services Center.[28]+

In June 1981, Community Legal Services represented ACORN in a class action suit against SEPTA (Southeast Pennsylvania Transport Authority) in the State Court to "halt fare increases."[29]

Community Legal Services has received at least **$14,737,681** from the Legal Services Corporation since 1976. Most recently in 1983, CLS was the recipient of $1,832,864 from LSC. This was an increase over the $1,831,864 which was allocated to them in 1982. For 1981, CLS received an even greater $2,429,850 from LSC.[30]

NLSA HELPS ACORN ON BIG FEE CASE

Community Legal Services is by no means the only benefactor of ACORN in the courtroom. The Neighborhood Legal Services Association (NLSA) in Pittsburgh, which has received at least **$9,578,809** from the Legal Services Corporation since 1976, has also provided representation for ACORN in a number of cases. The funding history of NLSA is equally impressive, with $1,211,700 being awarded to them in 1983, 1,210,700 in 1982, and $1,605,916 in 1981.[31]

In October 1980, NLSA represented ACORN in a class action suit against the Port Authority of Allegheny County, challenging fare increases in the transit authority. "The costs [of the case] were estimated to be in excess of $500,000 in August, 1981, and the case had been in litigation for under a year." According to Judge Stephen A. Zappala of Commonwealth Court, "The actual losers in this case are the ones that are footing the bill - namely the taxpayers. NLSA attorneys, PAT lawyers and court personnel are all paid with government money." In addition, NLSA paid an engineering student $6000 to "come up with a whole new fare system and route system for the transit authority."[32]

POLITICAL ACTIVITIES

ACORN is active in numerous aspects of political life, including elections. According to Wade Rathke's description of ACORN's local election activities in *The Community Organizing Handbook #1*, "In several cities ACORN is organizing change-of-government initiative campaigns designed to replace at-large systems of elections with ward by ward or neighborhood by neighborhood systems. Control of local government is at stake on such issues, and **ACORN members have always known and believed that such control is one of the goals of the organization.**"[33]+

ACORN "timed its first national convention purposely to coincide with the [Democratic] Party meeting" and the delegates marched to deliver the nine-point 'People's Program' to the Democrats, outlining "ACORN's national political strategy for 1980 and beyond."[34]

ACORN ERECTS 'REAGAN RANCHES'

In order to make more visible their demands, ACORN launched a national campaign of erecting tent cities on public grounds in 1982 - calling them "Reagan Ranches." This campaign was timed to coincide with the 1982 elections, and was especially prominent in such cities as Lansing, Michigan, Pittsburgh, Philadelphia, Washington, D.C., St. Louis, Columbus, Ohio, Atlanta, Houston, Boston and New Orleans. As many as 32 "Reagan Ranches" were planned, and as *Human Events* noted at the time, "**It was sponsored by a group...that has been financially supported by the same government it was demonstrating against...**As if it were not already apparent, ACORN is not just a group of 'mostly poor people' struggling for equal opportunity. It is a well-organized political machine, complete with slogans and rhetoric...**ACORN has shown that it... doesn't mind soaking the taxpayer.**"[35]+

Congressman Lawrence Craig (R-Idaho) has introduced HR 4828, the Federal Neutrality Act, which, if enacted, would make illegal Federal subsidies to advocacy groups such as ACORN.

Phyllis D. Swecker
Director, Research

+ denotes emphasis added.

[1] "Articles of Incorporation of Association of Community Organizations for Reform Now, Pulaski County, Arkansas, December 3, 1976.

[2] *The New York Times*, 10/6/76.

[3] Chapter IX, "Community Organization Research Action Project," House Appropriations Commitee, 1978.

[4] *State Relations Journal*, (no date).

[5] Federal Government grants/contracts computer printout: CSA - 1981; FTC - 1976; ACTION - 1980; VISTA - 1978; NEH - 1981. National Endowment for the Humanities 15th Annual Report, 1980.

[6] Federal government grants/contracts computer printout: VISTA - 1978.

[7] Op. Cit. "Community Organization Research Action Project."

[8] Donald Lambro, *Fat City: How Washington Wastes Your Taxes*, 1980, p. 172. (Paraphrase of the 1978 House Appropriations Committee investigation of CORAP.)

[9] Op. Cit. "Community Organization Research Action Project."

[10] Ibid.

[11] ACORN Community Organizing Model, Association of Community Organizations for Reform Now, (no date).

[12] Ibid.

[13] Federal government grants/contracts computer printout: NSF - 1980.

[14] "Teaching Skills in Community Organizing," Self-Reliance, September/October, 1980.

[15] "ACORN, the UAW, and the Teamsters," *Social Policy*, Spring, 1983.

[16-19] Ibid.

[20] *The New York Times*, 1/19/80.

[21] *Public Interest Profiles*, The Foundation for Public Affairs, 1982.

[22] Op. Cit. *The New York Times*, 10/6/76.

[23] General Accounting Office report to Rep. F. James Sensenbrenner, September 19, 1983.

[24] Letter to Mattie L. Thompson, Regional Director, Legal Services Corporation, Philadelphia, from Ernest E. Jones, Executive Director, Community Legal Services - 10/4/79.

[25] Letter to Peter G. Schaaf from Mark Jurikson - 9/18/79.

[26] Letter to Dan Bradley from Mark Jurikson - 12/28/79.

[27] Ibid.

[28] Letter to Howard Thorkelson from Ernest E. Jones - 11/21/79.

[29] "A Report On Legal Services Corporation And Their Abuses Of The People Of The Commonwealth of Virginia," prepared and compiled by the Swissvale Committee for Quality Education, 1622 S. Braddock Ave., Swissvale, Pittsburgh, PA 15218, March, 1982.

[30] Annual Report, Legal Services Corporation, 1976, 1977, 1978, 1979, 1980, 1981. Cumulative Grant Award Schedule, Legal Services Corporation, FY 1982 and FY 1983.

[31] Ibid.

[32] Op. Cit. "A Report On Legal Services Corporation And Their Abuses..."

[33] Op. Cit. Public Interest Profiles.

[34] "ACORN Plans for the '80 Elections," Ways & Means, Conference on Alternate State and Local Public Policies, May-June, 1979.

[35] Human Events, 9/10/82.

Senator **Denton**. Next we hear from a panel consisting of Dr. James McClellan, director of the Center for Judicial Studies in Washington, DC, and Dr. Charles Rice, a law professor at Notre Dame University in South Bend, IN.

Both of these individuals have distinguished backgrounds. Their résumés are prolifically worded, and to save dwindling time, without objection, I will make copies of their résumés part of the record.

But suffice it to say we could not have two more distinguished and qualified witnesses on today's subject.

[The following material was submitted for the record:]

RESUME

Name: James McClellan

Address: Route 2, Box 93, Cumberland, Virginia 23040

Home Phone: (804) 492-4922 Office Phone: (202) 544-1776

Date of Birth: June 26, 1937 Home State: Virginia

Marital Status: Married Dependents: Five

Military Service: U.S. Marine Corps, 1958-1964 (Honorable Discharge)

Education: College (Undergraduate): University of Alabama
Degree: B.A. (Political Science) 1960

College: (Graduate): University of Virginia
Degree: Ph.D. (Political Science) 1964

Law School: University of Virginia
Degree: J.D. (1981)

Professional Experience

Present Position:

Founder and Director, Center for Judicial Studies, and Editor of Benchmark, a bimonthly journal on the Constitution and the Courts, with offices in Cumberland, Virginia and the District of Columbia at 632 Constitution Avenue, N.E., Washington, D.C. 20002.

Previous Employment

1. Government

   Chief Counsel & Staff Director, Separation of Powers Subcommittee of U.S. Senate Judiciary Committee, January, 1981 to 1983. Aide to Senator John East.

   Minority Counsel, Separation of Powers Subcommittee of U.S. Senate Judiciary Committee, 1977-78. Aide to Senator Orin Hatch.

   Professional Staff Member and Director of Subcommittee Studies, Temporary Select Committee to Study the Senate Committee System, 1976-77. Aide to Senators Jesse Helms and William Brock.

   Legislative Assistant to Senator Jesse Helms, 1974-77.

   Special Advisor to Senator William Brock on Congressional Reform, Summer of 1973.

2. Academic

   Adjunct Professor, The Delaware Law School, Fall, 1981.

   Associate Professor of Government, Hampden-Sydney College, 1969-1974.

   Assistant Professor of Political Science, Emory University, 1965-1969.

   Assistant Professor of Political Science, University of Alabama, 1964-1965.

Honors and Activities

1. Research Grants: Robert A. Taft Institute of Government (1965); Emory University (1965, 1967, 1968); Relm Foundation (1969); Hampden-Sydney College (1970, 1971, 1972); E.I. Dupont de Nemours & Graduate School of Department of Agriculture (1975); Liberty Fund (1978); National Endowment for the Humanities (1983).

2. Fellowships and Awards: Undergraduate Fellowship, University of Alabama (1959-1960); Thomas Jefferson Fellowship, University of Virginia (1962-1964); Jefferson Davis Award in Constitutional Law (1981-Nominated by University of Virginia Law Faculty).

3. Editorial and Advisory Activities: Founder and Editor, The Political Science Reviewer, An Annual Review of Leading Works in Political Science and Law, 1970-1975 (Sponsored by Hampden-Sydney College and Virginia Polytechnic Institute); Member, Board of Editors, Journal of Politics, 1974-1978 (Sponsored by Southern Political Science Association); Member, Board of Editors, Modern Age, 1976-present; Member, Board of Editors, Georgia Journal of Political Science, 1973-present.

4. Professional Memberships and Listings: Special Issues Committee, Virginia State Bar Association; Supreme Court Historical Society; American Political Science Association; Congressional Directory; Southern Political Science Association; Selden Society; Philadelphia Society; American Society for Legal History; Organization of American Historians; Who's Who Among Authors and Journalists; Personalities of the South; Who's Who in Virginia; Who's Who in the South and Southwest; Who's Who in American Education; Dictionary of International Biography; International Scholars Directory.

5. Community Acitivities and Honors: Excellence Award, American Security Council(1967); Outstanding Man of the Year Award, Junior Chamber of Commerce, Dekalb County, Georgia (runner-up, 1968); Republican candidate, Georgia House of Representatives, 1968; Guest Speaker (weekly), WSB-TV and WRNG Radio (Atlanta, 1968-1969); Elected Justice of the Peace, Prince Edward County, Virginia (1972-76); Elected to numerous positions in the Republican Party of Georgia and Virginia, 1960-1980; Member and Faculty Advisor to Pi Kappa Alpha Fraternity.

6. Academic Committees and Related Activities: Chairman, Library Committee; Supervisor of Master's Theses and Doctoral Dissertations (Emory University); Elected by Faculty to Educational Policy Committee (1970); Executive Committee (1971); Bicentennial Committee (1972); Athletic Affairs Committee (1973); Student Government Association Teaching Award (Hampden-Sydney College).

7. Courses Taught, 1964-1981: American Government; Comparative Government; Constitutional Law; Constitutional History; Civil Liberties; Jurisprudence; Political Philosophy; Legal History; Western Man; The Liberal Tradition; Separation of Powers; The Congressional Process.

8. Visiting Lectureships and Professorships: University of Dallas (1968); East Texas State University (1970); Longwood College (1973); Graduate School, U.S. Department of Agriculture (1977-1978); University of Virginia (1979); The Delaware Law School (1981).

Professional Conferences and Public Lectures, 1968-1981:

Conference on Democratic Theory, Gatlinburg, Tennessee, 1968.

Panel Discussant. Program directed by Professor Charles Hyneman, President of American Political Science Assn., and sponsored by American Enterprise Institute.

65th Annual Meeting of American Political Science Association, New York, 1969. Delivered paper on the role of the Supreme Court in the American political system.

35th Annual Meeting of Southern Historical Association, Washington, D.C., 1969. Discussant on panel dealing with constitutional development in the Marshall Court.

Commencement Speaker, Pace Academy, Atlanta, Georgia, 1969.

The Intercollegiate Studies Institute's 1971 Summer School Program, Long Island, New York. Served on faculty with Professors Thomas Molnar, Will Herberg, Ernest van den Haag, and Lev. Dobriansky to deliver series of lectures at C.W. Post College on Liberty and the Rule of Law.

12th Annual Meeting of the American Society for Legal History, Buffalo, New York, 1972. Discussant on panel dealing with Joseph Story's contributions to American Law.

Law Day, Lynchburg College, 1972. Delivered address on Legal Conditions in Early America.

William & Mary College, 1972. Delivered lecture on origin and purpose of Bill of Rights.

Davidson College and University of Alabama at Huntsville, 1973. Delivered address on Church-State relations in the early republic.

Grove City College, 1973. Delivered address on Federalism and the Establishment Clause.

Yale University, 1974. Delivered address on the American political tradition.

Longwood College, 1975. Delivered address on the bureaucracy of the United States Senate.

Philadelphia Society Annual Meeting, Chicago, 1976. Delivered paper on The State of the American Congress.

U.S. Chamber of Commerce, Washington, D.C., 1977. Delivered address on status and significance of business and labor-related legislation in the 95th Congress.

American Judicature Society Annual Convention, 1981. Delivered address on Judicial Activism and Power of Congress to Regulate the Jurisdiction of Federal Courts.

American Bar Association Annual Convention, 1981. Appeared on panel with Erwin Griswold, Charles Rice, Robert Bork, and Congressman Barney Frank to debate issue of Congressional control of Supreme Court jurisdiction.

Commencement Speaker, Wakefield County Day School, Huntley, Virginia, 1981.

Publications:

1. Books

The Political Principles of Robert A. Taft (N.Y., 1967). Co-author with Russell Kirk.

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RICE, CHARLES E

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Senator DENTON. Gentlemen, I will ask that you summarize your written statements within 10 minutes, if you will, and the lights will give you an idea about the timing. Your entire written testimonies, without objection, will be made part of the record. I will ask Dr. Rice to begin, and welcome him back to Washington.

STATEMENTS OF CHARLES E. RICE, NOTRE DAME UNIVERSITY LAW SCHOOL, SOUTH BEND, IN, AND JAMES McCLELLAN, DIRECTOR, CENTER FOR JUDICIAL STUDIES, WASHINGTON, DC

Dr. RICE. Thank you very much, Senator. I have submitted testimony which is 18 pages in length, and what I would like to do is just very briefly touch on the main points.

There are two problems that have to be dealt with here. One is what you would call direct lobbying by recipients of Federal grants and contracts; the other is the grassroots lobbying.

Now, the solution is either to agree that they have the right to lobby and then try to segregate the funds and enforce some kind of restriction on their use of those funds, or to enact, as S. 1405 would do, a provision simply that 501(c) corporations, if they receive additional money through grants or contracts, may not engage in political advocacy.

The approach of S. 1405, I believe, is the preferable approach. It is simpler, it actually involves a lesser intrusion on the activities of the affected organization, because the critical point is the initial decision to apply for the grant or not.

These are not, incidentally, organizations with no connection with the Government. Organizations which are 501(c) and also recipients of Federal funds by grant or contract are double-dippers, or, in the case of 501(c)(3) organizations, triple-dippers, in the sense that they have the right to tax exemption and they have the right to deductibility of contributions, and now they want, on top of that, additional money by grant or contract, and they still want to be able to use their own resources at least to propagandize the Government.

And I think that there is a very essential element of fairness here which I would touch upon very briefly.

First of all, however, it is quite clear, as pointed out by the Supreme Court in the *Regan* case last year, that tax exemption is a subsidy granted by Congress, that the selection of persons for exemption, as the Court said, is a matter of policy and discretion for the Congress. And, again to quote the Court—"Congress is not required by the first amendment to subsidize lobbying," nor is it required to subsidize political advocacy.

It has been objected that the bill is under-inclusive in that it applies only to political advocacy by tax-exempt organizations.

Mr. Remes, who testified very clearly on this for the ACLU before this subcommittee, made that point.

However, it is not required, it is not necessary that Congress handle an entire problem at one stroke. There is no reason why Congress cannot single out the very substantial abuse presented by tax-exempt organizations and handle that problem.

And the Supreme Court, in the cases, the statements that I have cited in my prepared testimony, indicates that that is quite appropriate.

Another objection is that it is unconstitutional to condition the receipt of a Federal grant upon the organization's willingness, as Mr. Remes pointed out—it's a quote—"willingness to forgo the exercise of basic first amendment rights using its own resources." However, here again we are dealing with the power of Congress over tax-exempt organizations, which is a very substantial power.

And I have put into my prepared testimony references to various Supreme Court cases which indicate that it is quite appropriate, quite proper, for Congress to condition that sort of activity.

Now, further objections are made to this on the grounds of vagueness or overbreadth. And I think it would be desirable to make somewhat more specific the provision defining political advocacy. I have suggested a modification of section 3(b)(4) which would define political advocacy so as to make it certain, make it clear beyond doubt, that the act is not intended to preclude nonpartisan academic studies as long as they are not produced with the intent of influencing elections and as long as they do not advocate public action to change Government policy.

I think that is what we are aiming at, what we should be concerned about, these organizations, double- and triple-dipping organizations that go out and, having the benefit of these Government subsidies, launch grassroots lobbying campaigns or directly electioneer.

I believe, further, that one of the most important provisions here is the sunshine provision. Grantsmanship is an activity which is most often conducted away from the light of public scrutiny, and the sunshine provisions of section 4, I believe, are not unreasonable; they do not require unreasonably detailed information; and they are most important to restoring confidence in this entire system.

The final point I would make is this, that there is really an implicit assumption in the objections that are made against measures such as S. 1405, and the implicit assumption is that somehow it is unfair for Congress to refrain from subsidizing these organizations in their grassroots lobbying. I could make a legalistic case that Congress is not required to provide such subsidy.

But beyond that it seems to me that it is deeply unfair for organizations to claim the right to be double dippers and triple dippers at the public trough while at the same they are using their powers and using the prestige conferred upon them by the fact that they are Federal grantees to sway public opinion and to sway official decisions.

So I think this is a long overdue sort of measure. Of course, there can be discussions and debates about particular provisions of it, but I strongly support this approach, and I think S. 1405 is well-crafted.

Thank you.

[The following material was submitted for the record:]

PREPARED STATEMENT OF CHARLES E. RICE

This testimony will address some of the constitutional issues raised by S. 1405. I support the approach taken by this bill and I believe it is within the constitutional power of Congress.

Non-profit organizations misuse public funds in two general ways that are fairly described as "political advocacy" and that are pertinent to the object of this bill:

> 1. Direct Lobbying. The use of federal funds to influence directly members of Congress and of the Executive branch to support certain projects and policies.
>
> 2. "Grass roots lobbying." The use of federal funds to mold public opinion so as to generate public support for certain governmental projects and policies.

There are two major alternative ways of dealing with the problem of the use of federal funds for political advocacy by non-profit organizations. One is to continue federal funding of political advocacy organizations while attempting by regulation to prevent their use only of the federal funds for political advocacy. This approach is embodied in OMB Circular A-122. The other approach is to prohibit all federal funding of non-profit groups that choose to engage in political advocacy. In my opinion, this latter approach is not only consistent with the First Amendment, but it also offers the least restrictive alternative method of dealing with an abuse which itself threatens a massive destruction of freedom of speech and association in political matters.

The constitutionality of S. 1405 should be determined in light of the purpose of the tax exemption provided under Section 501(c) of the Internal Revenue Code. Congress has the power to impose restrictions as a condition of granting

501(c) status. The purpose of the 501(c) privilege of tax exemption is to enable its beneficiaries to devote all their income to their stated purposes without diverting any of it to the payment of taxes. [See Erie Endowment v. United States, 316 F.2d 151 (3rd. Cir. 1963)] Congress, moreover, has shown an overriding intent that organizations which receive the benefits of non-profit status under Section 501(c) of the Internal Revenue Code should be restricted as to their political activities. Only to a limited extent are they permitted to engage in political activity; in all other respects, the public policy is that 501(c) beneficiaries are precluded from engaging in political activity. [For a discussion of the restrictions imposed on the political activities of organizations exempt under Section 501(c), see Hopkins, The Law of Tax-Exempt Organizations (Ronald Press, 1979); see also Annotation: When is corporation, community chest, fund, foundation, or club "organized and operated exclusively" for charitable or other exempt purposes under Internal Revenue Code, 69 ALR2d 871] "The limitations in Section 501(c)(3) stem from the Congressional policy that the United States Treasury should be neutral in political affairs and that substantial activities directed to attempts to influence legislation or affect a political campaign should not be subsidized." [Christian Echoes National Ministry, Inc. v. U.S., 470 F.2d 849, 854 (10th Cir., 1973), cert. den. 414 U.S. 864 (1973), (Emphasis in original)].

The freedom to exercise a constitutional right, such as the freedom of speech, "does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom." [Harris v. McRae, 448 U.S. 297, 317-18 (1980)] Moreover, S. 1405 imposes no restriction whatever on 501(c) groups unless they voluntarily choose to seek another public benefit on top of their tax exemption. The proposal would apply only to "double dippers" - groups which have sought and received tax exemption and then have sought and received direct federal funding. Only such groups would be precluded from political advocacy. If they want to continue their political advocacy, they would not lose their tax exemption; they would only have to forego the additional benefit of direct funding. In this sense, the proposal is less restrictive than the Circular A-122 approach - the group makes its basic decision at the time of applying for funding and, if it receives the funding, it periodically recertifies its abstention from political advocacy and updates the information provided to the granting agency on the original application. The proposal is more self-enforcing than is the alternative. Since it would depend less on government initiative in uncovering violations, it would be less restrictive of First Amendment rights. One of the most effective propaganda points the opposition made against the original OMB proposal last year to restrict the use of public funds by political advocacy groups was that it would oppressively interfere with their daily activities. This claim was an exaggeration but the complexity of the enforcement that is inherent in that sort of approach made it easier for its opponents to portray it in that light. By contrast, a straight prohibition of all funding of non-profit political advocacy groups would put the primary emphasis on the original decision to apply for funding and the continuing disclosure requirements. Although it would entail some later investigation, auditing, etc., it would not require the segregation of funds and other complexities that could be entailed in the kind of approach embodied in OMB's revision of Circular A-122.

The strong, indeed compelling, need to terminate public funding of political advocacy groups is similar to that relied upon by the Supreme Court in its 1973 decision upholding the Hatch Act. If we substitute "federal grantees" for "federal employees" in the following passage, it will be apparent that the Court's analysis is applicable to the problem with which we are concerned in 1984:

> Our judgment is that neither the First Amendment nor any other provision of the Constitution invalidates a law barring this kind of partisan political conduct by federal employees.
>
> Such decision on our part would no more than confirm the judgment of history, a judgment made by this country over the last century that it is in the best interest of the country, indeed essential, that federal service should depend upon meritorious performance rather than political service, and that the political influence of federal employees on others and on the electoral process should be limited.
>
> There is another consideration in this judgment: it is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent.
>
> Another major concern of the restriction against partisan activities by federal employees was perhaps the immediate occasion for enactment of the Hatch Act in 1939. That was the conviction that the rapidly expanding Government work force should not be employed to build a powerful, invincible, and perhaps corrupt political machine. The experience of the 1936 and 1938 campaigns convinced Congress that these dangers were sufficiently real that substantial barriers should be raised against the party in power - or the party out of power, for that matter - using the thousands or hundreds of thousands of federal employees, paid for at public expense, to man its political structure and political campaigns. E.g., 84 Cong. Rec. 9595, 9598, 9604, 9610. [Civil Service Commission v. Letter Carriers, 413 U.S. 548, 556-57 (1973)]

In general, First Amendment rights, including the rights of speech, association and petition, enjoy a preferred constitutional status so that infringements upon them will be sustained only if justified by a compelling governmental interest and only if there is no less restrictive alternative which would adequately serve that governmental interest. [See Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620(1980)] Another consideration is the "overbreadth doctrine," which requires that restrictions on First Amendment rights be drafted precisely and narrowly. [See Broadrick v. Oklahoma, 413 U.S. 602 (1973); Lewis v. City of New Orleans, 415 U.S. 130 (1974); Shelton v. Tucker, 364 U.S. 479, 488 (1960)] These principles, however, appear to have a limited impact on the power of Congress to impose restrictions on eligibility for tax exemption.

The Supreme Court, in Regan v. Taxation with Representation of Washington [103 S. Ct. 1997 (1983); see also Bob Jones University v. U.S., 103 S. Ct. 2017 (1983)], recently held that "Both tax exemptions and tax-deductibility are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income. Deductible contributions are similar to cash grants of the amount of a portion of the individual's contributions." [103 S. Ct. at 2000] While it is true that "the government may not deny a benefit to a person because he exercises a constitutional right" [103 S. Ct. at 2001], the Regan case squarely reaffirmed the principle that "Congress is not required by the First Amendment to subsidize lobbying" [103 S. Ct. at 2001], and may condition tax exemption on the organization's commitment to refrain from lobbying activities:

> Congress could, for example, grant funds to an organization dedicated to combating teenage drug

> abuse, but condition the grant by providing that one of the money received from Congress should be used to lobby state legislatures. [103 S. Ct. at 2002]

Moreover, the Court in Regan concluded that, "Congressional selection of particular entities or persons for entitlement to this sort of largesse 'is obviously a matter of policy and discretion not open to judicial review unless in circumstances which here we are not able to find'. . . . For the purposes of this case appropriations are comparable to tax exemptions and deductions, which are also 'a matter of grace [that] Congress can, of course, disallow . . . as it chooses'. . . . These are scarcely novel principles. We have held in several contexts that a legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right, and thus is not subject to strict scrutiny." [103 S. Ct. at 2002-03] (citations omitted)

Serious reservations have been expressed about the constitutionality and wisdom of the S. 1405 approach to the misuse of public funds for political advocacy. Several of these criticisms were voiced by David Remes in his testimony on behalf of the American Civil Liberties Union before this subcommittee on April 25th of this year. One such objection is that the bill is under-inclusive in that it applies only to political advocacy by tax-exempt organizations. (Remes testimony, p. 4) That objection, I believe, is adequately met by the Supreme Court's recognition in Regan and other cases of Congress' extensive power to impose conditions upon the receipt of the subsidy provided by tax-exempt status. Non-profit organizations, it is true, are not the only offenders in using federal funds for improper political advocacy. But Congress is not required to solve the entire problem at one legislative stroke. Moreover, political advocacy by non-profit organizations presents a problem which merits special treatment in that such organizations are double-dippers (or in cases of organizations enjoying under Section 501(C)(3) both tax exemption and deductibility of contributions, triple dippers) when they enjoy Section 501(C) status and receive additional federal funds by contract or grant.

Another objection raised against S. 1405 is that it offends the First Amendment to condition "a tax exempt organization's access to federal contracts and grants on its willingness to forego the exercise of basic First Amendment rights using its own resources." [Remes testimony, p. 6] The passages I have quoted above from the Regan (pp. 6-8, above) and the Letter Carriers (p. 5, above) cases adequately answer this objection. In addition, it will be useful here to examine in some detail the general scope of the "unconstitutional conditions" doctrine. While it is true that there is no right to receive a government grant or contract, there is a right not to be excluded therefrom by invidious discrimination; nor can the government impose unconstitutional conditions on the award of a grant or contract. This "unconstitutional conditions" doctrine is the principal constitutional objection raised against the denial of federal funding to non-profit political advocacy groups. The doctrine rejects the notion that government benefits or government employment are mere privileges upon which the government may impose whatever conditions it chooses. That rejected notion was epitomized by Justice Holmes' statement, "The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman." [McAuliffe v. Mayor of New Bedford, 155 Mass. 216, 220, 29 N.E. 517, 517 (1892)] Instead, the "unconstitutional conditions" doctrine would restrict the power of government to condition even discretionary benefits upon the willingness of the recipient to forego the exercise of a constitutional right. In Perry v. Sindermann [408 U.S. 593, 597 (1972)], the Court stated:

> For at least a quarter-century, this Court has made clear that even though a person has no "right" to a valuable governmental benefit and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests - especially, his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to "produce a result which [it] could not command directly." Speiser v. Randall, 357 U.S. 513, 526, 2 L. Ed. 2d 1460, 1473, 78 S.Ct. 1332. Such interference with constitutional rights is impermissible.

Perry, however, held merely that a non-tenured college teacher was entitled to an opportunity to prove that he had "de facto" tenure and that the non-renewal of his contract was "a reprisal for the exercise of constitutionally protected rights." [408 U.S. at 598] Moreover, in Perry, the teacher alleged that the "decision not to rehire him was based on his public criticism of the policies of the college administration." [408 U.S. at 595] He thus alleged that the decision was based upon the content of his speech. The cases dealing with "time, place or manner" restrictions on speech have established a criterion that would seem to govern as well in this case, that "when regulation is based on the content of speech, governmental action must be scrutinized more carefully to ensure that communication has not been prohibited 'merely because public officials disapprove the speaker's views.'" [Consolidated Edison v. Public Service Comm., 447 U.S. 530, 536 (1980)] However, unlike the restriction on speech alleged in Perry v. Sinderman, the proposed ineligibility of political advocacy groups for federal funds is not based upon the content of the advocacy. It is even-handed and would preclude eligibility of such groups for funding regardless of the content of the advocacy in which the group is engaged.

In any event, whether the condition is based on the content of the speech or not, the "unconstitutional conditions" doctrine does not create an absolute bar to the conditioning of government funding upon the willingness of the recipient to refrain from activity in which he would otherwise be entitled to engage. "The basic flaw in the doctrine is its assumption that the same evil results from attaching certain conditions to government-connected activity as from imposing such conditions on persons not connected with government. In many cases this may be true, but the connection with the government may in certain circumstances make otherwise unreasonable conditions quite reasonable." [Van Alstyne, The Demise of the Right-Privilege Distinction in Constitutional Law, 81 Harv. L. Rev. 1439, 1448 (1968)] In the 1968 case of Pickering v. Board of Education, [391 U.S. 563 (1968)], where the Supreme Court reversed the dismissal of a public school teacher for writing a letter to a newspaper in which he criticized the board of education, the Court reaffirmed the unconstitutional conditions doctrine but emphasized its allowance of the imposition by the State of reasonable conditions upon its employees:

> To the extent that the Illinois Supreme Court's opinion may be read to suggest that teachers may constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with other operation of the public schools in which they work, it proceeds on a premise that has been unequivocally rejected in

> numerous prior decisions of this Court. E.g., Wieman v. Updegraff, 344 U.S. 183, 97 L.Ed. 216, 73 S.Ct. 215 (1952); Shelton v. Tucker, 364 U.S. 479, 5 L.#d.2d 231, 81 S.Ct. 247 (1960); Keyishian v. Board of Regents, 385 U.S. 589, 17 L.Ed.2d. 629, 87 S.Ct. 675 (1969). "[T]he theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected." Keyishian v. Board of Regents, supra, at 605-606, 17 L.3d.2d. at 642. At the same time *it cannot be gainsaid that the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general. The problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.* [*391 U.S. at 568*] (Emphasis added)

S. 1405 would properly balance the public interest in the integrity of the political process and the interest in free speech, particularly since it would be a less restrictive solution to this pressing problem than would be the funding of such organizations accompanied by an effort to restrict their use only of their federal funds. [*For a discussion of the various issues involved in determining eligibility for Federal grants under various programs, see Madden, The Right to Receive Federal Grants and Assistance, 37 Fed. B. J. 17 (1978)*] The "unconstitutional conditions" doctrine, moreover, has a particularly limited impact on S. 1405 because that bill involves the very broad Congressional power over tax exemptions and deductibility, discussed above at pp. 6-8.

A more serious objection to S. 1405 is that the definition of "political advocacy" in S. 1405 is "unacceptably vague" and "overbroad." [*Remes testimony, pp. 8-11*] The S. 1405 definition of "political advocacy" is indeed broad, particularly with respect to Sec. 3(b)(3)(c), and (I) and (J), which define "political advocacy" to include:

> (C) attempting to affect the opinions of the general public, or any segment thereof, with respect to governmental decisions;
>
> x x x x x
>
> (I) publication of any analysis, study, research, memorandum, or statement of policy which is prepared or published with the intent or design of having an influence upon the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, or any government decisions;
>
> (J) presenting of any program, addressed to the public, any portion of which is intended, calculated, or designed to influence any governmental decisions.

These restrictions are designed to protect the public against electioneering and "grass roots lobbying" by the double dipping groups described earlier in this testimony. However, this objective should be balanced against the important interest in protecting the right of such groups to communicate to the public their views and the results of their research so long as such communication does not cross the line into electioneering or explicit "grass roots lobbying." One solution could be to insert a new subdivision (H) in Section 3(b)(4) which could include language of along the following lines to emphasize that S. 1405 does maintain a proper balance between those interests:

> (4) "political advocacy" as used herein does not include -
>
> > (H) Making available to any person or to the public the results of nonpartisan analysis, study or research which is not prepared or made available with the intent or design of influencing the outcome of any Federal, State, or local election, referendum, or similar procedure, and which does not expressly advocate any action by the general public, or any segment thereof, to promote a change in any Federal, State or local legislation or governmental policy.

Such a provision would preserve the right of the affected organizations to furnish educational information to the public and to others. It would preclude the promotion of "studies" which are designed to influence elections or which are exercises in "grass roots lobbying."

One of the most important provisions of S. 1405 is Section 4. This spells out reasonable disclosures that must be made annually by recipient organizations. It is truly a "sunshine" provision. Grants and contracts are too often awarded in the dark, without adequate information about the recipient and its connections with other groups. Politically active non-profit groups are not only double dippers; they are secretive about it as well. It is urgently necessary to bring their activities into the light of day. If non-profit groups desire direct funding in addition to their tax exemptions, let them bring their affairs into the open so that a determination can be accurately and fairly made as to whether they are engaged in political advocacy and thus, under S. 1405 ineligible for such funding. This certification process, incidentally, would provide a self-enforcement mechanism that would further reduce the regulatory intrusion into the affairs of those groups. Much of the information required to be disclosed by S. 1405 would have been disclosed already in the group's application for 501(c) status. But that status may have been granted years ago, that information is not reliably required to be kept current and some items would not be included in the application for 501(c) status to the extent they would be required by S. 1405. The imposition of a thorough and detailed ongoing disclosure requirement of this type, enforced by penalties as provided in S. 1405, would be a significant achievement. And who could credibly object to it?

Underlying much of the opposition to S. 1405 is the unfounded assumption that it is somehow unfair to deny additional federal funding to those tax-exempt organizations that choose to engage in political advocacy. Of course, there is no legal right to a government subsidy for one's exercise of a constitutional freedom. [Harris v. McRae, 448 U.S. 297, 317-18 (1980)] But the opponents of S. 1405 implicitly assume that, even if Congress is not obliged to fund such political advocacy groups, it ought to do so out of a sense of fairness. That assumption, however, is false. The case for legislation such as S. 1405 rests not merely on the legal conclusion that Congress is not obliged to provide additional funding to tax-exempt political advocacy groups, but also on the reality that it is unfair for such groups to demand such funding.

When an organization which is already tax-exempt receives federal money by grant or contract, it may endeavor or be required by law, to use only "its own resources" [Remes testimony, p. 6] for its political activities. However, the receipt of the additional grant or contract money can operate to release the organization's own funds for use on political activity. And the mere fact that the group is a grantee or contractor for the government can confer on it, as a whole, an added credibility that can enhance its political activities. These consequences will be practically impossible to prevent. Further, an attempt to prevent the federal grant or contract from indirectly as well as directly enhancing the political activity of the group could impose a significant burden of supervision and regulation on the government and taxpayers. And no matter how carefully the allocation of grant and contract funds were monitored, the political process would be adversely affected by the inevitable suspicion of favoritism.

It is unfair for such organizations to impose such burdens on the taxpayers. They claim the right not only to influence directly the political process but to enjoy the status of double dippers and even triple dippers at the public trough while so doing. The injustice involved in this process cannot be controlled by palliative measures which legitimize the basic unfairness of disbursing public money to such groups. The solution instead is to adopt the approach embodied in S. 1405. The case for that approach rests upon the principle invoked by James Madison, the author of the First Amendment, who wrote in defense of religious liberty that: "Who does not see . . . [t]hat the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to confirm to any other establishment in all cases whatsoever?" [2 The Writings of James Madison 186 (Hunt ed. 1901)]. And Thomas Jefferson agreed that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical." [Brant. James Madison: The Nationalist 354 (1948)]

Senator **DENTON**. Thank you very much, Dr. Rice. I can't resist mentioning that two gentlemen on the panel have a number of things in common, besides being outstanding lawyers and scholars. Both were in the U.S. Marine Corps.

I can't resist saying that Jim McClellan is here testifying before his old subcommittee, the Separation of Powers, of which John East is the chairman—I am permitted to chair it today simply because I am the sponsor of this bill, at the courtesy of Senator East.

Jim McClellan was chief counsel and staff director of the subcommittee. He now holds a position of founder and director of the Center for Judicial Studies and editor of Benchmark, a bimonthly journal on the Constitution and the courts, with offices in Virginia, Washington, DC, and Texas.

Would you proceed with your opening statement, Dr. McClellan?

STATEMENT OF JAMES McCLELLAN

Dr. **McCLELLAN**. Thank you, Mr. Chairman for this opportunity to appear before you on S. 1405. I do need to make a disclaimer at the outset: I appear on my own behalf and not on behalf of the Center for Judicial Studies. I mention that I am the director of the Center for Judicial Studies solely for purposes of identification.

Let me begin with a general observation—and I want to be a political scientist here rather than a lawyer at the outset—that Government funding of private lobbying activities that are calculated to influence legislation is, in my judgment, contrary to democratic principles upon which our Constitution is based. It distorts the democratic process; it invites favoritism, corruption and tyranny. By laundering public funds through private interest groups to promote its objectives, a majority in power can gain an unfair advantage over political minorities. By withholding funds from those groups which advocate public policies that conflict with the aim of the majority, the majority necessarily can engage and does in fact in certain circumstances engage in political discrimination at the expense of the general good.

Government funding of political advocacy can thus become a form of graft for awarding friends and punishing enemies. It is, in my judgment, a practice that has no place in our democratic republic and it should be discouraged as a matter of general policy.

It may be argued, of course, that a conscientious and fair-minded Congress and President could endeavor to avoid some of these pitfalls by seeking to underwrite the expenses of all interest groups, groups representing a broad cross-section of public policy alternatives, ranging, I suppose, from the Ku Klux Klan to the One Worlders, but such lofty objectives are likely to result in little more than a raid on the public treasury, given the fallibility of man and the bias of those who would administer those programs.

Evidence gathered by the GAO, by Senator Hatch's Labor Committee, and many other organizations, indicates that this is already an existing problem; as you pointed out in your remarks, it is a crucial problem with regard to the Legal Services Corporaton.

In terms of practicability, then, support of political advocacy is inherently discriminatory against each and every faction within our society, no matter how bizarre it might be, that fails to get its share. Government funding of political advocacy also distorts our democratic process in the sense that it can artificially stimulate certain interest groups which might otherwise expire because of lack of public support. Doubtless there are a number of such groups today propped up at the taxpayers' expense.

Federal intervention in the marketplace of ideas is no less harmful than Federal intervention in the marketplace itself. It retards intellectual growth, crowds out competing ideas, and perpetuates bankrupt ideas that should be allowed to die naturally.

It is interesting to note that this whole policy of funding interest groups so they can engage in political lobbying is totally contrary to the libertarian philosophy which is supposed to underlie the first amendment of our Constitution, according to the Supreme Court.

Instead of funding political advocacy, Congress has repeatedly enacted legislation prohibiting the expenditure of funds for such purposes. Between 40 and 50 separate appropriations acts during the past decade have included anti-lobbying provisions, not to mention continuing resolutions incorporating those restrictions by reference.

An anti-lobbying rider applied in 1981 to the Community Services Administration appropriations is a case in point. The rider is drawn from a provision that first appeared in the fiscal 1979 appropriation for the Departments of Labor, Health, Education, and Welfare and related agencies. It has since been carried forward in successive public laws and resolutions applicable to those agencies. In addition, Congress has appended for a number of years the traditional publicity and propaganda rider to the Treasury, Postal Service, and General Government Appropriations Act.

Of general applicability to Federal agencies, this rider provides as follows: "No part of any appropriation contained in this or any other Act or of the funds available for expenditure by any corporation or agency shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress."

Another indication of Congress' traditional opposition to the use of Federal funds for political advocacy is a restriction imposed upon executive officers and employees by title 18, United States Code, section 1913. This law, which was enacted at the turn of the century, makes it a crime for an officer of the United States to use Federal funds for lobbying purposes. Section 1913 provides that no part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device intended or designed to influence in any manner a Member of Congress, and so forth.

Likewise, Congress has restricted the political activities of Federal employees for more than a century. As early as 1876, Congress enacted legislation forbidding Federal employees to request or receive money from other Federal employees for political purposes, or even to give money for such purposes.

Broader in coverage, the Civil Service Act of 1883 prohibited civil service employees from using their influence or authority to coerce individuals for political purposes or to interfere with elections.

These efforts to depoliticize the bureaucracy and remove it as far as possible from the partisan arena culminated in the Hatch Act, now in its 44th year. By that act, Federal employees are forbidden to take any active part in political management or in political campaigns.

Now, in light of these congressional enactments designed to discourage political advocacy by Federal officers and employees, by State and local employees administering Federal-supported programs, and also by private interest groups in receipt of Federal funds, the provisions of the proposed Federal Neutrality Act designed to prevent Federal grant recipients from using Federal funds for political advocacy are entirely consistent with established public policy and the express will of Congress.

Taken together, these laws and regulations reflect long-standing congressional opposition to both direct and indirect public funding of lobbying efforts to influence legislation. That Congress has the constitutional authority to prohibit the expenditure of funds for lobbying is clear enough. Until 1976 Congress denied tax-exempt status to organizations that engaged in lobbying. Such restrictions apply today to those organizations which devote more than 20 percent of their resources to such activity. If it had in mind to do so, Congress could just simply prohibit funding of all interest groups which engage in any form of political advocacy.

The point to be noted is that Congress has the authority and has traditionally exercised it to distinguish between those organizations that have engaged in political advocacy and those that do not.

In the case of *Oklahoma* v. *Civil Service Commission* in 1947, the Supreme Court upheld the right of Congress to impose conditions upon grants in aid where Federal funds were indirectly used for political advocacy. The Court stated in that case that while the United States is not concerned with and has no power to regulate local political activities of State officials, it does have the power to fix the terms upon which its money allotments to the State shall be disbursed.

In terms of first amendment considerations, it may even be argued that Congress has a constitutional duty to see that public moneys are not expended to promote political advocacy. In the case of *International Association of Machinists* v. *Street,* decided in 1961, Justice Black, arguing in dissent, contended that labor unions do not have the right to spend funds derived from compulsory union dues for political purposes.

As Justice Black said in that opinion, compelling a man by law to pay his money to elect candidates or advocate laws or doctrines he is against differs only in degree, if at all, from compelling him by law to speak for a candidate, a party, or a cause he is against. These were written, of course, in dissent more than 20 years ago, but Justice Black's position is now that of the Supreme Court.

In the case of *Abood* v. *Detroit Board of Education,* decided in 1977, the Supreme Court confronted the question whether unions could constitutionally use mandatory dues paid by public employees to finance political campaigns. Here the State required public school teachers to contribute to a union political fund which was then used to support candidates with which some of the teachers disagreed. In holding that the State law was unconstitutional, the Court embraced the views espoused by Justices Black and Douglas in the *Street* case, in ruling that the agency violated the plaintiffs' 1st and 14th amendment rights.

By a parity of reasoning, I would contend that the use of public funds derived from compulsory taxation for political advocacy is also unconstitutional.

If the first amendment provides, as the Court holds in *Abood,* that a labor union cannot use funds collected with the assistance of the Government for propaganda and other forms of political advocacy, then it would necessarily follow that the Government cannot use funds collected through taxes for the very same purpose.

This concludes my statement, Mr. Chairman, and I would be happy to respond to any questions that you might have.

Senator DENTON. Thank you, Dr. McClellan. The testimony of both of you was to the point, on the mark, and very helpful. I would note that Dr. Rice touched the issue which might become the argument. There may be another approach—is which will be offered to say let's just segregate the funds and permit the part which is private to be used for lobbying, the part which is Government not to be.

But for what it is worth, in my own experience in trying to get GAO to sort that out from among Legal Services Corporation's and Planned Parenthood's records, for example that was considered by us and dropped as a practicality, because by experience it seems that there are too many ways to play tricks with the books, too many ambiguities with respect to purchasing and spending to have made that a practical approach.

But we were quite conscious of that and agree with Dr. Rice that the preferable approach is S. 1405, which simply sustains the restriction against lobbying for 501(c) organizations.

The first question, which I will submit to both of you, deals with a GAO comment which concludes that the penalties provided by S. 1405 are unduly harsh. I must say, for the record, that this was in a GAO report which Senator East received from the Comptroller General of the United States, on May 7, 1984, and, without objection, I will place that report in the record.

[The following material was submitted for the record:]

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-214934

May 7, 1984

The Honorable John P. East
Chairman, Subcommittee on
Separation of Powers
Committee on the Judiciary
United States Senate

Dear Mr. Chairman:

This is in response to your April 5, 1984 request for GAO's position on S.1405, the "Federal Neutrality Act of 1983." The bill's purpose is to "assure the first amendment rights of all citizens and to provide criminal penalties for violations thereof." According to the bill, the citizens whose rights would be protected are members of the general public who may not agree with the views expressed by members of charitable or other tax exempt organizations who are recipients of Federal grant or contract funds, and who lobby with some portion of them. (Congressional Record, June 6, 1983, S7736-7.)

All forms of lobbying with Federal funds, regardless of the amount involved, would be a violation of the Act. Representatives of the offending organizations, as well as the organizations themselves, would be subjected to severe civil and/or criminal penalties and "total debarment of Federal benefits from any source or agreement whatsoever." (Section 6(5) of the bill.)

S.1405 is very similar in approach to the initial version of the amendments to Circular A-122, "Cost Principles for Nonprofit Organizations," published by the Office of Management and Budget on January 24, 1983. These amendments were withdrawn 2 months later, following objections from many sources within and outside the Government. I have enclosed a copy of my testimony on this subject, presented on March 1, 1983, to the Subcommittee on Legislation and National Security, House Committee on Government Operations. The GAO has also testified on two other occasions on this topic--most recently on April 2, 1984 before the Subcommittee on Intergovernmental Relations, Senate Committee on Governmental Affairs, which was considering S.2251, the "Uniform Lobbying Cost Principles Act of 1984." Copies of GAO's testimony on both these occasions are also enclosed.

Essentially, our position was--and remains--as follows:

(1) We agree completely that grant and contract funds should not be used to support private lobbying activities or political advocacy.

(2) We do not, however, regard lobbying activities as being inherently evil and therefore do not support an approach which would "taint" legitimate grant-related

activities of the organization, rendering all such costs unallowable if even a small portion were incurred for a lobbying activity.

The GAO has worked closely with the OMB in the months that followed the withdrawal of its original version of the lobbying amendments. We are pleased that the OMB has agreed to adopt an allocation approach instead. Under this principle, lobbying costs would be accounted for in the same manner as other unallowable costs, such as costs of advertising or fund-raising activities. The taxpayers would not be charged for any unallowable costs and the organization would receive the full measure of reimbursement to which it was entitled.

(3) In our work in this area, we have not found any evidence that non-profit organizations are wilfully violating existing lobbying laws, nor have our investigations uncovered many instances of even unintentional abuses. We did find widespread confusion over the precise nature of impermissible lobbying or "publicity and propaganda" activities, as they are called in existing law. To clear up the confusion on the part of both grantees and the granting agencies, we have advocated and strongly supported the promulgation of uniform cost principles on lobbying by the OMB, which we understand, are almost ready for publication in a revised form.

(4) In the light of our experience with lobbying investigations, we think that the penalties provided by S.1405 are unduly harsh. We cannot conceive of an instance in which even a wilful violation of some provision of the Act would merit a felony conviction. Moreover, recovery of three times the amount expended for advocacy activities if the action is brought by the Government, or a minimum recovery of $10,000, if the plaintiff is a private citizen, are punitive in nature and may raise serious constitutional questions.

(5) The disclosure requirements of section 4, labelled "Sunshine" in the bill, also raise constitutional questions because they appear to go far beyond the informational or auditing needs of any granting or auditing organization. Of particular concern are paragraphs (4) and (5), which require disclosure of information about other business relationships of directors and officers of the recipient organizations, which are entirely separate and unrelated to their role in such organizations.

We appreciate the opportunity to comment on S.1405, but for the reasons stated above, we cannot recommend enactment.

Sincerely yours,

Milton J. Socolar

Acting Comptroller General
of the United States

Enclosures

Senator **Denton**. With reference to the GAO statement, gentlemen, the GAO concluded, in that report, that the penalties provided by S. 1405 are unduly harsh. Numerous statutes, Federal regulations and legal opinions already restrict lobbying with federally appropriated funds. However, from the extension list of abuses cited during the course of these hearings it is, in other words, apparent that these statutes are ineffective.

So I would ask if you believe that the penalty provision of S. 1405 will effectuate the enforcement of the current prohibition on Government subsidy of partisan advocacy, and also if either of you believe such penalty is too harsh.

Dr. **Rice**. I do not, Senator, if I may go first. I do not think that they are unduly harsh at all. For example, section 6 of S. 1405 provides for perjury penalties for enforcement of the certification. I think that is entirely appropriate. The only time you get into a felony situation here in terms of the specific provision of the act, making it a felony, is where you are dealing with intentional misrepresentations, or, over in 6(3)(a), where you are dealing with an intentional violation. 6(3)(b), when it talks about negligent violations, provides for a much lesser penalty, that is, discharge or forfeiture of office only after trial in the U.S. district court.

Something has to be done about this, and I think these penalties are appropriate. I personally believe that the most useful may turn out to be the civil cause of action, which is section 6(3)(c), providing the civil cause of action on behalf of the United States or a private citizen with specified forms of relief. And I think this will have a very significant impact.

I very strongly disagree with the conclusion that these penalties are too harsh.

Senator **Denton**. Thank you, Dr. Rice. Dr. McClellan.

Dr. **McClellan**. I would subscribe to that view myself. I suppose you could argue that if the existing penalties that we have on the books were doing the job, these penalties here might be unduly harsh, but since the existing laws are not working I think it is necessary to advance to this stage in order to effect the will of Congress. And, of course, I think it is noteworthy that it is not unusual to provide for criminal penalties in this area—that is already on the statute books of this country; it is a Federal crime for executive officers to engage in lobbying, as I mentioned in my testimony.

So this is not out of keeping with established custom.

Senator **Denton**. The GAO report also concluded that the disclosure provisions of S. 1405 raise constitutional concern, because they appear to go far beyond the information or auditing needs of any granting or auditing organization.

Gentlemen, do you believe that the sunshine provision of S. 1405 requests unnecessary information?

Dr. Rice.

Dr. **Rice**. No, Senator, I don't. On section 4 subdivisions—for example, subdivisions (4) through (7), where they ask for detailed information as to the directors and organizing officers—I think you are dealing there with information which is essential to enforce the act, which has provisions concerning networking and affiliates, and so forth—I mean, you need information to find out whether you are dealing with a networking situation or an affiliate situation. Otherwise, enforcement becomes arbitrary.

And the sunshine provision is self-enforcing. The advantage of this S. 1405 approach is that it puts the initial decision in the hands of the organization; if they don't want to go through this, they don't have to apply for the Federal grant; if they want to apply for the Federal grant, then they provide the enforcement information. It is not a case where the initiative is on the Government to intrude and to disrupt the operations of the organization by pervasive investigation.

I think that this is a very salutory provision; in fact, I think it may be the most significant provision in the entire Act.

Senator **Denton**. Thank you, Dr. Rice. Dr. McClellan.

Dr. **McClellan**. I would agree with that also. And I would make this observation: that much of the information required here on the part of the grant recipient is already required in order for that organization to obtain 501(c)(3) tax-exempt status. When one applies to the Internal Revenue Service for such tax-exempt status, most of this information is required at that time.

So it's difficult to argue that this is an extraordinary request on the part of the Federal Government, since this information is already required in the first place.

Senator **Denton**. Thank you very much, Dr. McClellan.

Gentlemen, I have a commitment to be on the floor at noon. Therefore, in deference to the constraint of time, I will submit the rest of the questions prepared for you two gentlemen and respectfully request that they be answered as soon as possible in writing.

Thank you very much for your testimony this morning.

Dr. **McClellan**. Thank you, Mr. Chairman.

Dr. **Rice**. Thank you.

Senator **Denton**. Our final witness today is Rev. Charles V. Bergstrom, the executive director of the office of governmental affairs, Lutheran Council in the U.S.A.

Welcome, Reverend Bergstrom, and I would ask you, as I did the others, to summarize your testimony in 10 minutes, if you will, please, sir.

And we will include your entire written testimony in the record, without objection.

STATEMENT OF CHARLES V. BERGSTROM, EXECUTIVE DIRECTOR, OFFICE FOR GOVERNMENTAL AFFAIRS, LUTHERAN COUNCIL IN THE U.S.A.

Reverend **Bergstrom**. Thank you, sir. I also gave a second copy today to you—if that could be added to that—because it has some very specific quotes, Senator, about church-state relations and advocacy which are important.

Senator **Denton**. Could you refer to it in some nominal manner?

Reverend **Bergstrom**. Yes, sir, it's called "The Nature of the Church and its Relationship with Government," by the Lutheran Council, and it was printed in 1979.

Senator **Denton**. All right, sir, that, too, will be included in the record, without objection, and you are free to begin your testimony, with the request that it be limited to 10 minutes.

Reverend BERGSTROM. Thank you, sir. I would like to summarize what is in the formal presentation and then respond to some of the things that have been said this morning.

First of all, my testimony is presented on behalf of three of the Lutheran churches that are part of the Lutheran Council, and on behalf of them I express our thanks for this opportunity of commenting and testifying on S. 1405.

I indicate on the first page that there is now quite a history of concern on the part of many church agencies and other voluntary groups about increased efforts for regulation and legislation which affect the ministry and the work of these organizations. I referred to the Lutheran consultation. I also have a copy of a report, "Government Intervention in Religious Affairs,"[1] which comes from a conference gathering in 1981 which probably was the most representative religiously of any religious conference and another conference will be held in September of this year to take a look at areas where it seems that Government is moving more and more to try to define the ministry of the church and of voluntary organizations.

I mention that as a general concern, not specifically in relationship to S. 1405.

We in the church feel that one of the best ways to describe the church-Government relationship is on the basis of interaction. The Government has a right to regulate; we also feel that the church has a right to advocate. And now and then there develops a tension, as in this particular bill, as to how that is to be worked out.

Our testimony is summarized on the basis that there has been no evidence to show great abuse on the part of many voluntary organizations who are serving very well across this country.

I am sure you are aware of the hearings that were held on OMB Circular A-122 last year by the House Subcommittee on Legislation and National Security. The Solicitor General at that time had no evidence of great abuses.

As I have listened to testimony this morning, with quotations from the Washington Post, we wouldn't have any disagreement with that. Much of that has to do with the granting of money to organizations, and obviously money given for service projects should not be used for lobbying. That is not the issue before us at all, and I don't think anyone would want to defend that.

It is that abuse that the bill is working toward, but it seems to us that in working toward that goal and trying to overcome these abuses, it is also attacking the basic relationship of the voluntary sector. It doesn't seem very sensible or fair to us to pass new legislation when there are already current accounting requirements, there are practices, there are already laws, as Senator Symms has indicated, all kinds of laws, to deal with such abuses.

It seems to us the enforcing of these is the issue rather than drawing more stringent and more chilling kinds of legislation.

Let me point out just some of the words. "Affiliate" in section 3(a)(1)—in my particular case, Senator, that would mean that agencies, Lutheran agencies, which are serving all kinds of needs across the country, who receive Federal grants would limit my ability to speak to you this morning because they are affiliated with me. That word "affiliate" gives us a great deal of concern.

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[1] The report, "Government Intervention in Religious Affairs," is on file with the Subcommittee on Separation of Powers.

The definition section of sections 3(b) and 3(c), about "political advocacy," as it uses the phrase—"any segment thereof"—in describing areas of concern. That is a pretty broad description, and inclusive.

Such phrases as "intentional misrepresentation" give us concern also.

Senator **DENTON**. Reverend Bergstrom, I don't mean to interrupt except to assist in the understanding of your statements. There is no prohibition against a recipient organization from testifying before Congress. That is not at issue.

Reverend **BERGSTROM**. Right, the issue is the use of Federal funds

Senator **DENTON**. You said you wouldn't be here this morning if—and that is what I didn't understand.

Reverend **BERGSTROM**. But the word "affiliate," sir, relates me to agencies that do receive Federal funds, even though I don't——

Senator **DENTON**. Well, as I say, like Planned Parenthood, Legal Services Corporation—they can come here and testify in their own defense. They are 501's which do receive Federal funds, and even your affiliates could come here and testify this way.

Reverend **BERGSTROM**. This testimony is covered, but the broad words, it seems to us, could affect anything else we might do. We present testimony in other ways besides that of committees. We publish material which would be covered in the bill; all kinds of ways to advocate on behalf of the church.

Senator **DENTON**. Just so you understand that these affiliates or any other 501(c)'s that are existing can and shall come to testify before Congress, delivering their apologia in any way they see fit in their opening statements, if they are requested by Congress.

Reverend **BERGSTROM**. Right; if they are requested.

Senator **DENTON**. Yes.

Reverend **BERGSTROM**. I think that is the basic issue. Let me put it in these terms—page 3 of my statement.

> A nursing home for the elderly, a social service agency providing assistance for refugees, educational programs to assist developmentally disabled children and their parents—all might be affiliated with the Lutheran churches I represent, and all might receive Federal funds earmarked to carry out those society-enhancing purposes.

But advocacy is also one of the church's ministries upon which we firmly believe we have a right to speak, and it is that cause to which I am called and it is that work which our office seeks to do.

The term political advocacy has been used a great deal this morning and, of course, the interpretation of that would differ. It is very clear that people speak to issues which are related to service for people, to change laws that would be helpful to people, and we feel that many times we could not even speak to our own members in terms of particular laws or particular concerns that we might have.

Really what I am saying is we think it's harsh and unnecessary as a response to a problem that really has not been widespread on the basis of the evidence presented on the OMB circular.

I quote Representative Horton, a Republican from New York, who has said that:

> These people—referring specifically to voluntary agencies—provide ideas, they help us evaluate thoughts of our own; they aid in drafting documents so that those statements are technically correct and have as few unforeseen consequences as possible; and they give us an impression of how different groups in society will view our work.

I am acquainted with voluntary agencies. They do not fit the description that some of you have given this morning—unions, sexually oriented organizations, and so forth.

I am acquainted with those who work with the poor, with the refugees, and with the minorities, and particularly in the severe cutbacks in budgeting programs—a number of our agencies have had to close out those kinds of ministries. If the government does not carry out this service to the people and limits the advocacy ministry of organizations that do, the ones who are really going to suffer are those who are the most needy.

We feel that one of the distinctive missions of the church is to proclaim God's word not only in worship, and in public preaching, and in teaching, and in evangelism, but also in the ministry of advocacy.

Lutheran churches accept funds through our agencies to do social service. Records are always kept. To my knowledge, no charge has ever been brought against any church agencies of the Lutheran Church for misusing money that has been given to them by the Government—but they have advocated with their own money. And that distinction, it seems to us, is a bit blurred in the bill itself.

I would like to respond just briefly to some of the other comments of this morning. The Friends Society, the National Council of Churches, and Indian groups were mentioned, Senator—you could add, as I have said already, all of the Lutheran agencies to which I have referred—but it seems to me the discussion is really about the grants and whether or not they should get grants rather than a law to overcome their advocacy.

We would have to ask: does that apply to universities, to defense contractors, to any other corporations?

The choice would not be included in the bill for those that one of us might favor and another would not favor, and if there is abuse, we feel there are plenty of laws at the present time, as Senator Symms has already said, and adding more laws, it doesn't seem to us, is going to help any of the abuses that may be there.

"Political interests of favored organizations," "liberal and conservative"—those are meaningless terms to us when we seek to help people, and to cut off the opportunity for expressing that would simply make it more difficult.

So it seems to me that there are questions here about cutting back in Government funds and, at the same time, expecting the voluntary sector to pick up a great deal of that. There is a difference between grants, which we feel maybe or maybe not ought to be given to certain organizations, opposed to the question of whether or not they are using illegally the money that the Government has given to them.

Do we want a law that would limit all of that kind of advocacy, because it may be that some are misusing Government funds?

My experience with the voluntary sector I have already referred to. It seems to me there has been a gross exaggeration this morning in some of the comments about double- and triple-dippers or those receiving subsidies. I would reject that definition for Catholic Charities, for instance, and the great amounts they receive as well, as my own church does. They are people trying to serve, and I don't think that is descriptive of their ministries.

Graft was mentioned. I think we ought to have specific cases of where these voluntary organizations have indicated that and carry out the laws that now these lawyers have told us do really govern them.

We still have concern, Senator, about the OMB Circular A-122 changes, and Brian O'Connell of independent sector has summarized those in another response to OMB.

I would like to close with a brief quotation from Brian O'Connell, because it summarizes pretty well what we think is the difficulty for government and voluntary agencies to work out their concerns and to be fair and to obey the laws referring to any of these funds that they do receive.

> At the present time about two-thirds of the money that is received by agencies is their own, about one-third of it comes from government agencies, rather than the government carry out those programs, have their own hospitals and so forth, and it doesn't seem practical or fair to cut the one-third share of support for sheltered workshops, job training, and then leave the impression that all of the voluntary groups should absorb these cutbacks in government-run programs. The crunch is compounded by the human response of government bureaus to pass along to voluntary organizations this increase in the cuts. In the past 5 or 6 years, the government has come to voluntary groups with almost desperate pleas for help in dealing with deinstitutionalization of mental hospital patients who have been put on the streets without any arrangements. Many voluntary mental health facilities have responded.
>
> It seems inconceivable that the administration should require that those who run these half-way houses or other community services must not work with government to help develop comprehensive mental health services that in the end will provide both early discharge and orderly community follow-through.
>
> It would have been unconscionable during the refugee crisis for the government to say to the Catholic Relief Agency, "for God's sake help us solve this problem, but because we are going to underwrite part of that help, don't you dare use any of your contributed income to try to influence how this program is conceived, legislated, organized, or operated."

It seems to me that this bill only aggravates the problem of assisting in helping people, and it seems to me it is quite inappropriate and very insensitive, and I think that to some of the organizations that I know give so much to the great needs in this country, it is almost insulting.

[The following material was submitted for the record:]

PREPARED STATEMENT OF CHARLES V. BERGSTROM

My name is Charles V. Bergstrom. I serve as Executive Director of the Office for Governmental Affairs, the Lutheran Council in the U.S.A. On behalf of the Council, I express appreciation to the Senate Subcommittee on Separation of Powers of the Judiciary Committee for the opportunity to testify in opposition to S. 1405, the "Federal Neutrality Act of 1983." I request my printed testimony and spoken comments be made a part of the permanent record of these hearings. I am speaking on behalf of three church bodies which participate in the Lutheran Council:

> The American Lutheran Church, headquartered in Minneapolis, Minnesota, composed of 4,900 congregations having approximately 2.4 million United States members;
>
> The Lutheran Church in America, headquartered in New York, New York, composed of 5,800 congregations having approximately 2.9 million members in the United States; and
>
> The Association of Evangelical Lutheran Churches, headquartered in St. Louis, Missouri, composed of 270 congregations having approximately 110,000 United States members.

There has been a recent history of increased government regulation and proposed legislation that affects the ministry of religious organizations and the work of much of the voluntary sector of our nation. Some of this seems to indicate a governmental distrust of the voluntary sector. While this mistrust is not peculiar to this administration, it is harder to understand in the current context, given the President's theoretical reliance on the private and voluntary sector to provide needed services. In a time when the government is asking more from church and other service organizations there should not be any actual or implied harassment of these groups. Many of these organizations are working diligently to help the increased number of poor, the hungry, and those needing special assistance. We feel that S 1405 would result in unwarranted government intervention into the activities of churches and other voluntary groups.

Individual and collective voices have expressed concern about government actions affecting advocacy efforts of non-profit groups. This was one of the church/state issues studied in 1979, when the Lutheran Council in the USA convened a conference to deal with recent instances of governmental encroachment on the rights of the churches. A very broad and inclusive interfaith conference in February 1981, entitled "Government Intervention in Religious Affairs," also addressed this issue, and a follow-up gathering is planned for September of this year. S 1405 can only increase that well justified reaction.

An increasingly complex society has produced growing interdependence and interaction among groups, persons, and resources in the governmental, economic, and voluntary sectors. The government's responsibilities to maintain equity and order and to provide services essential to the common good have led churches, the voluntary sector, and the state into greater contact and, at times, into tension, as they pursue their often complementary activities. As governmental bodies seek to perform their roles and charitable groups seek to fulfill their missions, each needs to be aware of the other's purposes, principles, and methods. In their endeavors, all have the task of formulating and clarifying their positions.

This hearing is representative of such essential communication efforts--efforts which would be undermined by the pending legislation. The Lutheran churches I represent recognize that government has a right to ensure that funds granted to voluntary organizations are used for the purposes intended. That is a legitimate governmental concern. But the church has an understandable concern that the government not define the ministry of the church, restrict its legitimate, society-serving activities or hinder its communication with government. S 1405 clearly would do exactly that, while not adding significantly to the government's interest.

I wish to say early in this testimony that the Lutheran churches I represent are not at all convinced that there is any widespread misuse of government funds by those charitable organizations receiving federal funds. The House Subcommittee on Legislation and National Security of the Government Operations Committee conducted hearings on OMB Circular A-122 in March of 1983. That circular also sought to restrict advocacy ministries of charitable organizations. Testimony of many voluntary groups refuted the need for more stringent regulations to restrict those fine organizations. The testimony of the Solicitor General backed their claims, noting that there is no evidence for suspicion about federal funds being used wrongly--hence no compelling government interest to justify the burdensome approach outlined in S 1405.

If any organizations are violating current law, they should be prosecuted. It is neither fair nor sensible to pass new legislation for everyone when current accounting requirements and practices could be clarified to meet the government's concerns--if that is shown to be necessary. Much of the language of S 1405 creates a chilling effect for these groups seeking to serve special needs.

Among the many provisions which we consider overly broad and ill-defined are the following:

Prohibitions Section 3, (a) (I) "No Government funds may be disbursed to any recipient organization which engages in political advocacy or which is an affiliate of any organization which engages in political advocacy;"
Definitions Section 3. (b) (3) (C) ["Political Advocacy"as used herein includes-] "attempting to affect the opinions of the general public, or any segment thereof, with respect to governmental decisions;"
Enforcement Section 6 (1) "Any intentional misrepresentation with respect to the certification or disclosure requirements shall constitute a felony, punishable by a fine up to $10,000 per offense, and/or a prison term not to exceed two years per offense."

The term affiliate is terribly inclusive, Lutheran churches, for instance, have a range of affiliated organizations, which are separate in structure and governance, but which carry out the mission of the church. Some would fall under the definition found in S 1405. A nursing home for the elderly, a social service agency providing assistance for refugees, educational programs to assist developmentally disabled children and their parents--all might be affiliated with the Lutheran churches I represent, and all might receive federal funds earmarked to carry out those society-enhancing purposes. We engage in these supporting activities because social service is part of the church's mission--and in these instances, through grants of federal monies, we interact with and assist the government in carrying out activities it establishes to enhance the common good. These affiliates are extremely careful that the funds channeled through them are used for the purposes intended--and not for other church-related purposes.

But advocacy is also part of the church's mission. (I will say more about this later in this testimony.) The bill before us would mean that parent churches affiliated with social service agencies would not be able to engage in advocacy with their own resources without putting their affiliates in jeopardy of losing federal funds--or worse! This bill would restrict the church's ministry on behalf of persons in need. It would even restrict any contacts made to preserve the integrity of the church over/against governmental encroachment. For example, if Congress were considering a bill revoking the basic tax exemption of churches, the churches could not protest that action to their representatives without endangering the status of their refugee resettlement activities-even though the two issues have nothing to do with each other! In effect, the bill would attempt to prescribe what the church should or should not be doing--a job that government is neither competent nor constitutionally authorized to do.

Other broadly-defined terms cause us difficulty. "An act of political advocacy" might mean something quite different to the government than it does to the church or other groups. Churches would be unable to state their interest in governmental policies designed to alleviate international hunger to their own members using their own money without placing their centers for the retarded in jeopardy of losing their federal grants.

In addition, the "criminal penalties" in S 1405 are a harsh and unnecessary response to a problem which has not been proven to be widespread; they would have a chilling affect on the legitimate activities of charitable agencies and churches and on the useful interaction between the voluntary and public sector. For the government's own good, the non-profit sector should rather be encouraged to communicate with the government. I quote Rep. Frank Horton (R-NY), ranking minority member of the House Government Operations Committee, who asserted the need for such communication: "These people provide ideas; they help us evaluate thoughts of our own; they aid in drafting documents so that those statements are technically correct and have as few unforeseen consequences as possible; and they give us an impression of how different groups in society will view our work." Such information would be discouraged by this bill. The flow of information would be throttled; the fear of criminal penalties or of losing federal funds would divide those who need to work together for the common good. To cite just one example, there would be less non-profit involvement in legislative sessions--and committee hearings such as this. Much service for the poor, refugees, and minorities would be curtailed, and for no reason!

The bill is entitled "The Neutrality Act of 1984". That raises the question, neutral in what way? The bill seems to indicate fundamental lack of neutrality. We would assert that those voluntary groups willing to serve and using federal funding for specific governmental-determined purposes should not lose their rights to free speech generally.

The implications for church-affiliated groups are even more complex. I would like to share with you the basis for our understanding of our working relationship with government. The 1979 Lutheran Council consultation stated: The distinctive mission of the church includes the proclamation of God's Word in worship, in public preaching, in teaching, in administration of the sacraments, in evangelism, in educational ministries, in social service ministries, and in being advocates of justice for participants in the social order. Note the ministry of advocacy! Lutheran churches have the authority and prerogative to enter into relationships, associations, and organizations with one another; with overseas Lutheran churches and bodies; with other Christian fellowships or other religious groups on regional, national, and international levels; and with voluntary or governmental agencies where such interaction is helpful and fitting to their respective purposes. In this "functional interaction," the government may conclude that efforts and programs of the churches provide services of broad social benefit. In such instances and within the limits of the law, the government may offer and the churches may accept various forms of assistance to furnish the services. But functional interaction also includes the role of the churches in informing governmental authorities about church interests, and advocating for and speaking publicly on issues related to social justice and human rights. From the Lutheran perspective, the church has the task of addressing God's Word to its own activities and to government. The United States Consitution guarantees the right of the churches to communicate concerns to the public and to the government. S 1405 would go far beyond a healthy interaction between church and state; it would restrict the free exercise of our religion.

I strongly urge the committee to consider the serious problems involved in such legislation as S 1405. Present laws fully govern the use of federal funds by 501 (c)(3) organizations. These religious and secular non-profit organizations serve this nation well! Brian O'Connell, President of Independent Sector, which represents approximately 500 voluntary groups, has said: "One of the unique aspects of American Society is its ability to blend public and non-profit resources to develop sound public policies and services. This often means that the less costly, more effective, and responsive services are provided. As we work together to meet America's needs and aspirations, it will be essential to protect and preserve the appropriate independence of voluntary associations. Part of that independence is expressed in needed and legitimate advocacy, an essential aspect of the service of many public serving non-profit institutions."

Certainly,legislation should encourage and support voluntary groups. By no stretch of logic does S 1405 do that. Shelve it permanently!

THE NATURE OF THE CHURCH AND ITS RELATIONSHIP WITH GOVERNMENT

A statement with public policy recommendations on church-state issues adopted by the Lutheran Council in the U.S.A.

A. INTRODUCTION

An increasingly complex society has produced growing interdependence and interaction among groups, persons, and resources in the governmental, economic, and voluntary sectors. The government's responsibilities to maintain equity and order have led both the churches and the state into greater contact and, at times, into tension. As governmental bodies seek to perform their roles and the churches seek to fulfill their missions, each needs to be aware of the other's purposes, principles, and methods. In their endeavors, both the churches and the government have the task of formulating and clarifying position statements and guidelines for implementation and application when appropriate.

The Lutheran Council in the USA, a cooperative agency of The American Lutheran Church, Association of Evangelical Lutheran Churches, Lutheran Church in America, and Lutheran Church–Missouri Synod, is aware of rising concern within its participating bodies over governmental activity in matters affecting the churches and their ministries. There are instances in which laws, rulings, and regulatory procedures on the part of government appear to infringe upon the churches and their agencies and institutions. Governmental efforts to define the nature, mission, ministries, and structure of religious organizations are likely to continue. These developments have raised questions within the Lutheran churches about the right and competence of government to define the nature, mission, ministries, and structure of religious bodies.

The Lutheran Council recognizes that an ongoing process of communication within the Lutheran family of churches and with other religious bodies and organizations in the voluntary sector is proper and timely as response is given to the government. Government officials need to be informed about the positions and perspectives of the Lutheran churches.

On these grounds the Lutheran Council convened a consultation on church-state issues which resulted in the following statement and recommendations. The report of the consultation was adopted by the council's 1979 annual meeting on May 16 in Minneapolis.

B. STATEMENT OF AFFIRMATION

1. Church and Government in God's World

God's omnipotent activity in creation is dynamic; that is, it is living, active, and powerful in all human affairs. The structure and polities of civil and Christian communities are determined and arranged by tradition, circumstances, and needs.

Lutherans acknowledge the twofold reign of God, under which Christians live simultaneously. God is ruler of both the world and the church. The church is primarily the agency of the Gospel in the new age of Christ, while the state is primarily the agency of the Law in the old age of Adam.

Given the balance of interests and differing responsibilities of the churches and the government in God's world, the Lutheran churches advocate a relationship between the churches and the government which may be expressed as "institutional separation and functional interaction."

Both the churches and the government are to delineate and describe the proper and responsible extent of their functional interaction in the context of God's rule and the institutional separation of church and state.

2. Institutional Separation

In affirming the principle of separation of church and state, Lutherans in the United States respectfully acknowledge and support the tradition that the churches and the government are to be separate in structure. As the U.S. Constitution provides, government neither establishes nor favors any religion. It also safeguards the rights of all persons and groups in society to the free exercise of their religious beliefs, worship, practices, and organizational arrangements within the laws of morality, human rights, and property. The government is to make no decisions regarding the validity or orthodoxy of any doctrine, recognizing that it is the province of religious groups to state their doctrines, determine their polities, train their leaders, conduct worship, and carry on their mission and ministries without undue interference from or entanglement with government.

a. The Church's Mission

1) The central mission of the church is the proclamation of the Gospel; that is, "the good news" or promise of God that all persons are forgiven by and reconciled with God and one another by grace through faith in Jesus Christ.

2) The church is the fellowship of such forgiven and reconciled persons united in Jesus Christ and guided by the Holy Spirit to be sons and daughters of the Father. In and through that fellowship Christians express their love for, confidence in, and reliance upon God through worship, education, social action, and service.

3) The church is also the people of God called and sent to minister under his authority in his world. God also calls the church to be a creative critic of the social order, an advocate for the needy and distressed, a pioneer in developing and improving services through which care is offered and human dignity is enhanced, and a supportive voice for the establishment and maintenance of good order, justice, and concord. Another mark of the presence of the church in the world is in its ministries involving activities, agencies, and institutions through which the church and society seek to fulfill their goals in mutual respect and cooperation.

4) Lutherans hold that their churches have the responsibility to describe and clarify to their members and to society the mission of the Lutheran churches and to determine, establish, maintain, and alter the various forms through which that mission is expressed and structured.

5) The distinctive mission of the churches includes the proclamation of God's Word in worship, in public preaching, in teaching, in administration of the sacraments, in evangelism, in educational ministries, in social service ministries, and in being advocates of justice for participants in the social order.

6) On the basis of their commitment to him who is both Lord of the church and Lord of the world, Lutheran churches establish, support, operate, and hold accountable their congregations, agencies, institutions, schools, organizations and other appropriate bodies.

7) While church bodies have differing polities, it is fitting to describe them, including their duly constituted agencies, according to their ecclesiastically recognized functions and activities.

8) Lutheran churches have the authority, prerogative, and responsibility to determine and designate persons to be professional church workers, both clergy and lay; to establish criteria for entrance into and continuance in the functions carried on by professional church workers; to create educational institutions for training professional church workers; and to provide for the spiritual, professional, and material support of such persons. Such support extends throughout the preparation for, activity in, and retirement from service in the several ministries of the churches.

9) Lutheran churches have the authority and prerogative to enter into relationships, associations, and organizations with one another; with overseas Lutheran churches and bodies; with other Christian fellowships or other religious groups on regional, national, and international levels; and with voluntary or governmental agencies which the Lutheran churches and other groups deem helpful and fitting to their respective purposes.

b. The Government's Role

1) According to Lutheran theology, the civil government's distinctive calling by God is to maintain peace, to establish justice, to protect and advance human rights, and to promote the general welfare of all persons.

2) As one of God's agents, government has the authority and power in the secular dimensions of life to ensure that individuals and groups, including religious communities and their agencies, adhere to the civil law. The churches and their agencies in the United States are often subject to the same legislative, judicial, and administrative provisions which affect other groups in society. When necessary to assure free exercise of religion, however, Lutheran churches claim treatment or consideration by government different from that granted to voluntary, benevolent, eleemosynary, and educational nonprofit organizations in society.

3) Government enters into relationships, associations, and organizational arrangements with nongovernmental groups, including churches, according to the nation's laws and traditions, in order to fulfill its God-given calling and without compromising or inhibiting the integrity of either the groups or the government.

4) Government exceeds its authority when it defines, determines or otherwise influences the churches' decisions concerning their nature, mission, and ministries, doctrines, worship and other responses to God, except when such decisions by the churches would violate the laws of morality and property or infringe on human rights.

3. Functional Interaction

Lutherans in the United States affirm the principle of functional interaction between the government and religious bodies in areas of mutual endeavor, so that such interaction assists in the maintenance of good order, the protection and extension of civil rights, the establishment of social justice and equality of opportunity, the promotion of the general welfare, and the advancement of the dignity of all persons. This principle underscores the Lutheran view that God rules both the civil and spiritual dimensions of life, making it appropriate for the government and the churches to relate creatively and responsibly to each other.

In this functional interaction, the government may conclude that efforts and programs of the churches provide services of broad social benefit. In such instances and within the limits of the law, the government may offer and the churches may accept various forms of assistance to furnish the services. Functional interaction also includes the role of the churches in informing persons about, advocating for, and speaking publicly on issues and proposals related to social justice and human rights. From the Lutheran perspective, the church has the task of addressing God's Word to its own activities and to government. The U.S. Constitution guarantees the right of the churches to communicate concerns to the public and to the government.

a. The Church's Responsible Cooperation with the Government

1) The church relates to the interests of the state by offering intercessory prayers on its behalf. Christians are called to offer supplications and thanksgiving for all persons, especially "for kings and all who are in high positions" (1 Timothy 2:1).

2) The church relates to the interests of the state by encouraging responsible citizenship and government service. The church has always admonished its members to be "subject to the governing authorities" (Romans 13:1) out of respect for the civil power ordained by God.

3) The church relates to the interests of the state by holding it accountable to the sovereign law of God, in order to provide judgment and guidance for those leaders responsible under God for the peace, justice, and freedom of the world.

4) The church relates to the interests of the state by contributing to the civil consensus which supports it. Especially under the U.S. system, which provides for wide participation, the church has the responsibility to help create a moral base and legal climate in which just solutions to vexing political problems can take place.

5) The church relates to the interests of the state by championing the human and civil rights of all its citizens. Christians believe that under God the state exists for people, not people for the state. In addition, the church may volunteer its resources as a channel for meeting the needs of society through cooperation with government.

b. The Government's Responsible Cooperation with the Church

1) The state relates to the interests of the church by ensuring religious liberty for all.

2) The state relates to the interests of the church by acknowledging that human rights are not the creation of the state.

3) The state relates to the interests of the church by maintaining an attitude of "wholesome neutrality" toward church bodies in the context of the religious pluralism of our culture.

4) The state relates to the interests of the church by providing incidental benefits on a nonpreferential basis in recognition of the church's civil services which are also of secular benefit to the community.

5) The state relates to the interests of the church by providing funding on a nonpreferential basis to church agencies engaged in the performance of educational or social services which are also of secular benefit to the community.

C. PUBLIC POLICY RECOMMENDATIONS

The foregoing "Statement of Affirmation," prepared by the Lutheran Council's Consultation on the Nature of the Church and Its Relationship with Government, speaks in broad terms about a Lutheran understanding of the appropriate relationship between church and government, under God, which has been described in terms of "institutional separation and functional interaction."

The consultation applied this understanding to a number of concrete issues presently confronting Lutheran churches, their agencies and institutions in their relationship with government. The following recommendations, which deal with current issues, illustrate ways our churches can address future issues and should be understood as relating to the "Statement of Affirmation."

1. Religious Liberty

We affirm in principle the civil right of the free exercise of religion by a wide variety of groups in our pluralistic culture. We acknowledge that the constitutional guarantees protecting religious beliefs are absolute. However, we recognize that those guarantees governing religious practices are not absolute. The violation of human rights and the breaking of just laws in the name of religion are deplored by our churches.

Recommended:

That the Lutheran Council encourage the participating churches to oppose any attempt by government to curb religious liberty through criminal and/or administrative measures focused at groups, except in cases posing a grave and immediate threat to the public's health, safety, or welfare.

2. Regulatory Processes

Lutheran churches, together with other churches and voluntary organizations, perceive a trend toward greater governmental intervention and regulation leading to erosion of civil and religious liberties.

Recommended:

That the Lutheran Council urge Congress to review the regulatory processes, to ensure that they afford adequate notice and opportunity to the public to study and respond to proposed regulations and rulings.

3. Integrated Auxiliaries

Prior to 1969 most religious organizations, including churches and their related agencies, were exempted from filing informational returns with the Internal Revenue Service. The Tax Reform Act of 1969, however, stipulated that all organizations exempt from taxation under Section 501 (a) of the Tax Code would henceforth have to file an annual informational Form 990 return—except churches, their "integrated auxiliaries," conventions and associations of churches, the exclusively religious activities of any religious order, and exempt organizations with gross receipts under $5,000 annually. The law involves the reporting of information; no payment of taxes is involved.

The problem for the IRS since 1969 has been to define "integrated auxiliaries," since that term had no legal meaning and no common definition among religious groups. In February 1976 the IRS issued proposed regulations which had the net effect of providing for all churches a single and extremely narrow definition of religious mission. Protests by a number of religious organizations led to some modifications in the "final" regulations issued in January 1977, but the regulations continue to be restrictive. Explicitly excluded from the definition of "integrated auxiliaries" are church-related hospitals, orphanages, homes for the elderly, colleges, universities, and elementary schools, although elementary and secondary schools are exempt from filing.

The heart of the issue is that the regulation relative to "integrated auxiliaries" seeks to impose on the churches a definition of "religious" and "church" which the churches cannot accept theologically, one which constitutes an unwarranted intrusion by the government into the affairs of the churches. The narrow definition introduces confusion within the churches and their agencies and institutions. Questions are raised in the agencies and their constituencies about whether these ministries are considered to be part of the churches' mission. It also leads the government to attempt other intrusions into the activities of the churches and church-related agencies and institutions, e.g., the Department of Labor's stance in the unemployment insurance tax issue (see section 5, below).

Our churches would probably not object to the disclosure of most of the information required by Form 990 by those agencies and institutions of the church whose ministries appear to have counterparts in the public sphere, if such requirement of disclosure were not predicated upon a denial that those ministries are an integral part of the churches' mission. But the churches object on principle to having any of their ministries, including their agencies and institutions, be treated as "not religious." These agencies and institutions perform ministries which are essential to the churches' mission and must not be put in a different category from the strictly sacerdotal functions of the churches.

Recommended:

- That the Lutheran Council encourage the participating churches to seek statutory change which will recognize the religious character of the churches' ministries through their agencies and institutions;
- That the Lutheran Council encourage the participating churches to urge selected agencies and institutions to initiate a court test of the present IRS definition of "integrated auxiliaries." The intention of such action would be (a) to assure the churches' agencies and institutions that the church bodies continue to consider them an integral part of their mission; (b) to assist Congress in achieving a better understanding of this issue; and (c) to achieve a court ruling restoring the recognition of the integrity of the churches' ministry through their agencies and institutions.

4. IRS and Private School Desegregation

A religious organization, as other organizations otherwise entitled to a tax-exempt status, cannot claim the exempt status and at the same time operate contrary to established public policy on racial nondiscrimination. Withholding or withdrawing of the tax exemption by government must be based on an organization's racially discriminatory policy or practice determined on facts within a framework of due process. Presumptions on general circumstances or external conditions are inadequate for this purpose.

On August 22, 1978, the Internal Revenue Service issued a "Proposed Revenue Procedure on Private Tax-Exempt Schools." The proposal set forth guidelines which would be used by the IRS to determine whether such schools are operated on a racially discriminatory basis and whether they are entitled to tax exemption under Section 501 (c) (3) of the Internal Revenue Code. On December 5, 1978, the IRS held hearings on the proposed revenue procedure. At that time, Lutheran church bodies presented testimony opposing the proposed procedure. On February 9, 1979, the IRS revised its original proposal. The revised revenue procedure is a reasonable procedure for dealing with racial discrimination by private schools. It may have been unnecessary, but it is not objectionable.

Recommended:

That the Lutheran Council urge the participating churches to support the withholding or withdrawing of the tax-exempt status of organizations which, in fact, have a policy or practice of racial discrimination.

5. Unemployment Insurance Tax

To understand the current issues involving the churches' exemption from unemployment insurance coverage, the following points must be remembered:

First, the statutory exemption from coverage under the unemployment insurance law is based on structure, i.e., "church," "convention or association of churches" and "organization operated primarily for religious purposes." The Department of Labor is trying to qualify this by reading into it a functional test, narrowly tied to worship.

Second, elimination of the exemption would seem to have only a negligible impact on free exercise of religion. The direct effect would be paying a tax. There would be an indirect effect of possibly paying a higher tax (depending on experience rating) based upon discharging employees for what the organization might regard to be misconduct on religious grounds but which the government would decide was not such misconduct.

Both religion clauses of the First Amendment are violated when the government establishes an exemption based on structure and then applies it on the basis of the government's perception of whether an activity is or is not religious or sufficiently religious.

Recommended:

That the Lutheran Council, while not necessarily opposing legislation which would eliminate the churches' exemption from unemployment insurance coverage, encourage the participating churches to oppose efforts by regulatory agencies of government to include the churches in unemployment insurance programs by definitions that appear to be contradictory to existing legislation.

6. Public Funding and Regulation of Church-Related Education and Social Services

Education and social services are the tasks of society as a whole. These are public services. When churches contribute to the fulfillment of these public services, they may accept a measure of public support and a concomitant degree of monitoring by government on behalf of the public. That is, government may provide assistance on a nonpreferential basis in recognition of the public services and benefits provided by church-related educational institutions and by social service agencies and institutions of the churches. In relation to these public services, government regulation of church-related institutions and agencies is not per se objectionable.

Recommended:

- That the Lutheran Council urge the participating churches to object when governmental regulation of church-related educational institutions and social service agencies or institutions violates due process, exceeds statutory authority or infringes on First Amendment guarantees;

- That the Lutheran Council encourage the participating churches to join, when possible, with other members of the voluntary sector in objecting to unreasonable regulations. Only when there is a bona fide constitutional question at stake should the Free Exercise Clause be invoked as the basis for objection to regulation;

- That in order to maximize the access of citizens in our pluralistic society to education and social services from agencies and institutions of their choice the Lutheran Council encourage the further exploration and assessment of all constitutional means of government support for a variety of social and educational services at all levels, whether public, private, or church-related.

7. Specialized Ministries of Clergy

Church and government are presently interacting in two sets of circumstances involving the specialized ministries of the churches' clergy. One has to do with specialization in pastoral counseling and the other with chaplaincies in specialized settings. Both of these ministries are more often conducted apart from and on behalf of congregations than through specific local congregations.

The point of intersection between church and state with respect to specialization in pastoral counseling is where governmental units seek to license or otherwise regulate such ministries. The normal counseling dimension in the work of parish pastors is not a part of the issue.

The points of interaction between church and state with respect to chaplaincies in specialized settings have to do with the right of churches to have adequate access in order to serve persons in such settings, the right of individuals in those settings to have access to the ministries of the churches, and the best way to combine these two rights of access.

Attention is drawn to the statement defining pastoral counseling and suggesting standards for certification and accountability approved by the Lutheran Council's Division of Theological Studies and Department of Specialized Pastoral Care and Clinical Education and by the council itself. Additionally, two studies are currently underway in the DTS in consultation with the DSPCCE: one on state licensure of pastoral counselors and the second on institutional chaplaincies.

Recommended:

- That the Lutheran Council encourage the participating churches to establish standards of approval and accountability for professional pastoral counselors and urge the states to recognize the status of such pastoral counselors;

- That the Lutheran Council urge the participating churches to maintain their right of access to restricted environments (e.g., prisons, hospitals, and the military) in order to serve people in those environments, assert the right of people in such environments to access to the ministry of the church, and assert that these two rights of access are best served when qualified persons are integrated into the total function of that environment.

8. Regulation of Lobbying Activity

Advocacy on behalf of justice is an integral part of our churches' mission. The "substantiality" test as applied to lobbying activity requires that "no substantial part" of the income or activities of any tax-exempt organization may be directed toward "carrying on propaganda, or otherwise attempting to influence legislation" (Section 501 (c) (3) of the Internal Revenue Code). Such a test unfairly penalizes, through the threat of loss of tax exemption, those churches which regard public advocacy as part of their mission. Moreover, the effect of this test is to give preferred status, in violation of the Establishment Clause of the First Amendment, to those churches which do not participate actively in the debate on public policy.

Recommended:

That the Lutheran Council urge the participating churches to resist in principle the "substantiality test" as applied to lobbying activity by the churches.

Regulation of lobbying activity may jeopardize the constitutional rights of freedom of speech and freedom to petition the government for redress of grievances which, in turn, is contrary to the interest of open government and the public's right to be informed on issues. It is the responsibility of those who sponsor legislation that may seriously jeopardize those rights guaranteed under the First Amendment to certify that there is a compelling need for government intervention and regulation.

Lobby disclosure legislation which has been proposed extends its scope beyond those organizations engaged in major and continuing lobbying activity. It would, in fact, lay heavy burdens upon small, nonprofit organizations and thus limit many of the services they render in search of peace, justice, and human rights.

Recommended:

That the Lutheran Council publicize the arguments it has set forth as testimony on March 14, 1979, before the House Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary, stating opposition in principle to many of the components of far-reaching lobby disclosure legislation.

Lobby disclosure legislation which includes provisions requiring the reporting of grass-roots lobbying and the disclosure of the names of contributors will substantially restrict the free exercise of religion. Such legislation may well result in intimidation of the churches in carrying out their mission because of the massive record keeping that it would require. Disclosure of names poses a potential threat to those who might be inclined to address specific issues through contributions to the churches. Such legislation could also lead to excessive entanglement of government in the work of the churches.

Recommended:

That the Lutheran Council urge the participating churches to oppose any lobby disclosure legislation which would substantially restrict the free exercise of religion.

The method for enforcing any lobby disclosure requirements is an important issue. Criminal sanctions are inappropriate in that they lead to intimidation of those who would be inclined to address government and thus will have a chilling effect on free speech and the right to petition the government.

Recommended:

That the Lutheran Council recommend that the participating churches continue to oppose criminal sanctions within the context of any present or future lobby disclosure legislation.

9. Fund-Raising Disclosure

Lutherans support in principle the concept of fund-raising disclosure. The members of this consultation gladly endorse voluntary reporting of financial operations by church-related and other charitable organizations and encourage the maintenance of an informed giving public. However, in saying this, we are not endorsing every legislative or administrative effort that may be proposed to implement disclosure.

While aware of legitimate interest in curbing past abuses, we oppose federal legislation and regulation which would encompass the entire charitable community in an effort to reach and expose the activities of a very small number of fraudulent operators who solicit money from the general public.

There is no compelling need for legislation requiring charitable solicitation disclosure, given existing laws. Broad and inclusive legislation in this area would likely lead to an expansion of bureaucracy and could create serious constitutional difficulties.

Recommended:

That the Lutheran Council urge the participating churches to oppose any legislation relating to fund-raising disclosure which leads to an unwarranted expansion of government bureaucracy without a justifying and compelling need, an unwarranted and excessive entanglement by government in the affairs of the church, or an unconstitutional involvement by the government in defining the church, its mission, ministry, or membership.

10. Tax Exemptions and Deductions

Religious organizations receive a number of tax exemptions and deductions under state and federal law. However, not every benefit of exemptions and deductions presently enjoyed is indispensable to the free exercise of religion. Lutherans in the USA must never be willing to subordinate their right to such free exercise of religion in exchange for, or as a condition of, the continuation of all benefits of exemptions and deductions currently in effect.

Recommended:

- That the Lutheran Council lend its support to coordinated efforts to ensure the continuance of all proper tax exemptions and deductions for all organizations in the voluntary sector, including religious organizations, as long as acceptance of these exemptions and deductions does not jeopardize constitutionally protected religious rights and freedoms;
- That the Lutheran Council urge repudiation of the concept that exemptions and deductions for organizations in the voluntary sector are tax expenditures.

11. Enhancing the Importance of Charitable Contributions

Studies have shown that changes in tax forms to simplify filing have had an adverse effect upon charitable giving. To reverse this trend, legislation has been introduced to make the charitable deduction available to all taxpayers, whether they elect the standard deduction or itemize their deductions.

Allowing a separate charitable deduction for all taxpayers whether or not they itemize their other deductions would (a) represent an important incentive to personal giving to voluntary human services, (b) recognize the unique nature of the charitable deduction in contrast with other currently itemized deductions, (c) democratize the charitable deduction's base by extending its use to most middle and low-middle income taxpayers, (d) reverse the current trend toward decreased use of this deduction, and (e) avoid the regulatory and related governmental requirements associated with direct forms of federal assistance.

Under another proposal such a charitable deduction for all taxpayers would be allowed only if the charitable contributions exceed a certain amount or percentage of income (the "floor"). Establishing a "floor" would negate the positive effects of a proposal which permits all taxpayers to deduct gifts to charity on their individual income tax returns.

Recommended:

- That the Lutheran Council continue to support legislation that would allow all taxpayers to take a deduction for their charitable gifts, whether or not they itemize their other deductions;
- That the Lutheran Council inform its participating church bodies and the Congress of the justification and need for such a deduction;
- That the Lutheran Council continue to oppose any new limitations, such as a "floor," on the use of the charitable deduction.

D. IMPLEMENTATION OF CONSULTATION GOALS

For implementation of the goals of the consultation on church-state issues, the following actions were taken by the annual meeting of the Lutheran Council in May 1979:

- Adopted the above report of the consultation as a policy statement for the guidance of the work of the council;
- Authorized the general secretary of the Lutheran Council to have the report and the recommendations as adopted printed and distributed to the church bodies participating in the consultation;
- Authorized the general secretary of the Lutheran Council or his representative to present testimony thereon before committees of the Congress, legislative bodies, and agencies of government as opportunity arises, the precise testimony in each instance being subject to approval by the presidents of the participating church bodies or their appointees;
- Requested the presidents of the four participating church bodies to nominate persons for election by the council to constitute a continuing consultative committee of seven, responsible for studying church-state issues, this committee to meet at least twice a year with the staff of the council's Office for Governmental Affairs;
- Authorized the appointment by the general secretary of the Lutheran Council, in consultation with the executive director of the Office for Governmental Affairs, of a committee of legal consultants, including lawyers drawn from the four participating church bodies, to meet on call of the general secretary for deliberation of legal aspects of church-state issues;

- Authorized the Office for Governmental Affairs in cooperation with the Division of Theological Studies and the Division of Mission and Ministry to hold a follow-up consultation with representatives of other church bodies and others interested in matters considered by the consultation;
- Referred the report and recommendations of the consultation as adopted by the council to the participating bodies for their endorsement in substance.

Senator DENTON. Thank you, Reverend Bergstrom. It is not the intent nor would it be the practice, I assure you, to tilt with the windmills which you have erected as to legitimate churches and so on.

As to the statement that you think it is exaggeration with respect to the violations, the abuses, against lobbying which have taken place by organizations which should not be doing the lobbying, I can refer you to Justice Department reports which sustained the abuses which we found in my subcommittee regarding Legal Services Corporation which I think would cause your hair to curl. I think you would be shocked at those abuses.

The Justice Department sustained those as gross abuses, and then said but there may not have been criminal intent before the fact—that is, by the way the law is presently written. That is why we wish to change tbe law, to change the parameters by which that judgment would be made, and make it clearer that such funds could not be abused by bookkeeping disguise as to their use.

I see no reason for your expressed fears. What we are trying to do is deal with a problem which is widespread within the Government in its effort to promote the general welfare.

The purpose of the legislation before us today is to ensure that funds granted to voluntary organizations are used for the purposes intended. The commonwealth demands that, accountability is required, law must be observed.

So that is our intent, and to erect such ghoulish thoughts in our minds as to attack legitimate churches, I assure you, is not within reality.

You note in your testimony that you remain unconvinced that there is any widespread misuse of Government funds, and I would like to offer you a document entitled "Lobbying on a Shoe String," which is the 1982 publication issued by the Massachusetts Poverty Law Center. Now, they are supposed to be helping the poor. If the poor got the money that they are supposed to get by what is appropriated, they would each have $30,000—we wouldn't have them in poverty.

But we have got lobbying for these socialistic or whatever other causes, some of which are downright illegal in themselves.

The National Endowment for the Humanities in properly used Federal funds to produce a political documentary on the PLO. Is that something that you would want or that any of the examples which I mentioned in my opening statement were proper uses of Federal money? I gave about 14 or 15 examples; other examples were given by other witnesses.

We must take legislative recourse as a means toward solving these abuses. You are right: enforcement is the problem. But the way the law is currently written enforcement is impossible and has been so with respect to any given major case, such as the Legal Services Corporation.

So I certainly empathize with support in every way the activities of the Lutheran Church, and I assure you that it will be neither the intent nor the practice for this law to be used against them.

Reverend **Bergstrom**. Senator, it seems to me, though, what you have been saying is about 501(c)(3) groups, which you have said are covered by the law. Our statement says we do not know of any widespread misuse of Government funds by charitable organization receiving Federal funds. I have not yet heard any specific cases where those voluntary groups have received that. If you have those, I would be very happy to receive it. I will not be shocked, sir, I am a pastor, it would not shock me at all. We have had the Palatine Fathers in recent history, we have had the highest elected Government agencies in Federal Government who have abused their rights and power—I am not shocked by that.

I am saying if we pass a law that uses a word like "affiliates" and so forth that it is going to be so inclusive you are just going to hinder work to help people.

Senator **Denton**. We will consider that very carefully, Reverend Bergstrom—and I am told that I must go to the floor and be present at 12 o'clock, which means I have got to go over there on a dead trot.

And I would like to thank you and Dr. McClellan and Dr. Rice, who are still here, and we may submit further questions to all of you for the record.

Your testimony has been valuable and will assist us in the development of the final form of this legislation.

The hearing stands adjourned.

[The hearing adjourned at 11:58 a.m.]

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